



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No.: 221121-0246]**

**RIN 0648-BK17**

#### **Fisheries of the Northeastern United States; Northeast Multispecies Fishery;**

#### **Amendment 23**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing regulations for Amendment 23 to the Northeast Multispecies Fishery Management Plan, which the New England Fishery Management Council adopted and NMFS approved. This action adjusts the existing industry-funded at-sea monitoring program for groundfish sectors to improve the accuracy of collected catch data (landings and discards) and catch accounting. The measures implementing Amendment 23 are intended to ensure there is a precise and accurate representation of catch to set catch limit levels that prevent overfishing and determine when catch limits are exceeded.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for amendatory instruction 4 (§ 648.11(l)(5)), which is effective December 15, 2022.

**ADDRESSES:** The New England Fishery Management Council (Council) prepared an Environmental Impact Statement (EIS) for this action that describes the proposed measures in Amendment 23 to the Northeast Multispecies Fishery Management Plan (FMP) and other considered alternatives, and analyzes the impacts of the proposed

measures and alternatives. The Council submitted the amendment to NMFS, including the EIS, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the Council, including the EIS and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/amendment-23>.

Copies of this final rule and the small entity compliance guide prepared for permit holders are available from: Michael Pentony, Regional Administrator, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01938 and accessible via the internet at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/commercial-fishing/northeast-groundfish-monitoring-program>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Greater Atlantic Regional Fisheries Office and to: <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Mark Grant, Fishery Policy Analyst, (978) 281-9145.

#### **SUPPLEMENTARY INFORMATION:**

##### **Amendment 23 Summary**

The Council initiated Amendment 23 to consider changes to the groundfish monitoring and reporting system to ensure it is providing accurate catch information necessary to manage the fishery effectively. The measures the Council chose in this action adjust the existing industry-funded sector monitoring program to improve the

accuracy of collected catch data (landings and discards) and catch accounting. To address these issues, the Council adopted Amendment 23 at its September 2020 meeting. On April 12, 2022, we approved Amendment 23, including all measures adopted by the Council. In this final rule, we implement the approved measures in Amendment 23. The implementing regulations in this final rule:

- Replace the current process for calculating an annual at-sea monitoring (ASM) coverage target with a fixed monitoring coverage target as a percentage of trips, dependent on Federal funding.
- Approve additional electronic monitoring (EM) technologies as an alternative to human at-sea monitors;
- Exclude from the monitoring requirement all trips in geographic areas with expected low groundfish catch;
- Require periodic evaluation of the monitoring program and exclusions from the monitoring requirement;
- Remove the management uncertainty buffer from the portion of the acceptable biological catch (ABC) allocated to the sector catch share, if warranted, when the monitoring coverage target is 100 percent; and
- Grant authority to the Greater Atlantic Regional Administrator to revise sector reporting requirements to streamline reporting for the industry.

NMFS published a proposed rule (87 FR 11014, February 28, 2022) that discussed the proposed measures in detail and included proposed implementing regulations deemed necessary by the Council. Under the Magnuson-Stevens Fishery Conservation and Management Act, we approve, disapprove, or partially approve measures that the Council proposes, based on consistency with the Act and other applicable law. We review proposed regulations for consistency with the fishery management plan, plan amendment, the Magnuson-Stevens Act, other applicable law,

and publish the proposed regulations, solicit public comment, and promulgate the final regulations. On April 12, 2022, we approved Amendment 23, including all the management measures recommended by the Council.

## **Approved Measures**

### *ASM Coverage Target*

The regulations implemented by this final rule replace the current method for determining the ASM coverage target for deploying human at-sea monitors, including the coefficient of variation (CV) standard, stock status criteria, and the annual determination by NMFS, with a fixed coverage target as a percentage of trips, dependent on Federal funding. To address bias, the coverage target will be 100 percent of trips for 4 years, provided Federal funding can support NMFS and industry costs. The ASM coverage target in years 1-4 may be less than 100 percent, and will be set at the maximum level for which there are sufficient Federal funds to support all NMFS and industry costs. The ASM coverage target will default to 40 percent in years 1-4 if Federal funding cannot completely support all industry costs for a coverage target greater than 40 percent. In year 5 and beyond, the coverage target will be 40 percent unless replaced by a subsequent Council action. However, Amendment 23 also allows for increased ASM coverage in year 5 and beyond, when Federal funding is available to support industry costs. For years with a 40-percent ASM coverage target, Federal funding will be used to first pay NMFS costs and then to support as much of industry costs as possible.

Each year, NMFS will evaluate available Federal funding. NMFS will determine how much Federal funding is available for the groundfish sector monitoring program and then use that in conjunction with other available information (*e.g.*, recent monitoring costs, estimate of the number of vessels choosing EM) to calculate the ASM coverage target between 40 and 100 percent for the coming fishing year. This funding-based determination replaces the former annual process for determining the ASM coverage

target for the sector monitoring program. NMFS will announce the ASM coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS, if Federal funding information is available (see *Determining Total Monitoring Coverage at a Time Certain* below).

On November 14, 2022, NMFS announced that the ASM coverage target for the sector monitoring program would be 80 percent of all sector trips subject to the ASM program. The 80-percent coverage target is based on the spending plan approved by Congress for funds appropriated for fiscal year 2022. NMFS determined that the 80-percent ASM coverage target, in conjunction with EM, will continue to help address monitoring bias, support the collection of information and data to help with future determinations of appropriate ASM coverage levels, and monitor sector operations, to the extent practicable, to reliably estimate overall catch by sector vessels. NMFS will continue to reimburse 100 percent of sector ASM and EM costs through the Atlantic States Marine Fisheries Commission.

#### *Electronic Monitoring*

This rule authorizes sector vessels to use the audit model and the maximized retention model of EM (MREM), in place of human ASM, to satisfy the sector monitoring requirement. Implementing EM models as alternatives to human ASM provides each sector the flexibility to choose the monitoring options (ASM, audit model EM, MREM) that best meet the needs of its members and ensure catch accountability. Through their operations plans, sectors must develop monitoring plans that describe how the sector will use the chosen monitoring tools. EM is expected to provide important information for NMFS and the Council to consider during the first four years and to provide a suitable basis for sector monitoring programs, as an alternative to human ASM, to ensure catch accountability. A vessel using EM remains subject to Northeast Fishery Observer Program (NEFOP) coverage, which is set at a level to meet the standardized

bycatch reporting methodology requirements of the FMP and the Magnuson-Stevens Act. Amendment 23 does not remove or alter the existing authority for the Regional Administrator to deem types of EM technology sufficient, or to require EM if necessary, to be used in place of human at-sea monitors. The Regional Administrator may approve or disapprove additional forms of EM, consistent with the Administrative Procedure Act (APA). The Council may also approve additional forms of EM in a future action.

The audit model is one of the EM models included in Amendment 23. As discussed in the proposed rule, NMFS previously determined the EM audit model is sufficient to verify a vessel's submission of information on groundfish discards and other relevant information (*e.g.*, date and time, gear category, location) for the purpose of catch accounting, provided that the vessel's captain and crew adhere to catch handling and reporting requirements as described in the vessel monitoring plan (VMP) (86 FR 16686, March 31, 2021). Additional details of the audit model requirements are contained in the Fishing Years 2021-2022 Sector Operations Plan, Contract, and Environmental Assessment Requirements guide (<https://bit.ly/3pdau1L>). In this final rule, we are making an administrative change to require audit model vessels to report discards at the sub-trip level, rather than the haul level (see *Changes from the Proposed Action*) below.

This rule also implements the availability for use of the MREM model. MREM verifies compliance with catch retention requirements and uses dockside monitoring (DSM) to collect information on allocated groundfish at the dock that otherwise would be collected at sea. Under the MREM model, the vessel operator and crew are required to retain and land all catch of allocated groundfish on all sector EM trips, including fish below the minimum size specified at 50 CFR 648.83, that otherwise would be required to be discarded. Unallocated regulated species, ocean pout, and non-groundfish species must be handled in accordance with standard commercial fishing operations. Any allowable discards must occur at designated discard control points on the vessel,

described in the VMP. EM data from the trip are reviewed by the EM service provider to verify that the vessel operator and crew complied with the catch retention requirements. A human dockside monitor meets the vessel at port upon its return from each trip to observe the offload and collect information on the catch (particularly fish below the minimum size). The dealer must report to NMFS landings of all fish by MREM vessels, including fish below the minimum size specified in the regulations. This rule implements MREM consistent with the NMFS MREM program detailed in the draft Sector Operations Plan, Contract, and Environmental Assessment Requirements guide for fishing year 2022 available at: [https://media.fisheries.noaa.gov/2022-01/210826\\_SectorOpsEAGuidanceFY2021\\_2022\\_Revised.pdf](https://media.fisheries.noaa.gov/2022-01/210826_SectorOpsEAGuidanceFY2021_2022_Revised.pdf).

A vessel may use the audit model or MREM to meet the sector monitoring requirement only if that EM model is included in the sector's approved operations plan. In order to effectively administer the ASM and EM systems, the Regional Administrator may approve only sector operations plans that adopt EM systems that limit switching between ASM and EM within the same fishing year. Thus, each operations plan that allows vessels to use EM must require such vessels to opt into an EM program for an entire fishing year, with two exceptions. First, a sector may allow a vessel a single opportunity to opt in/out of EM at any time during a fishing year if the sector operations plan includes both an approved ASM and EM plan. Second, if a vessel changes to a gear type not covered in the VMP, the vessel may temporarily use ASM until the VMP authorizing the use of the new gear type is approved. We would consider requests to switch from one EM program to another during a fishing year on a case-by-case basis that considers minimizing disruption and whether the switch is feasible within the current system. The Regional Administrator may provide written approval of adjustments to the restrictions on joining or leaving the EM program along with publishing such changes on the NMFS regional website, consistent with the current process for administrative

changes to sector operations plans.

Vessels using EM must have their EM system operational and running on every sector groundfish trip, including trips that would be excluded from the ASM requirement (see *Exclusion from Monitoring Requirements for Certain Vessels Under Certain Conditions* below), unless issued a waiver by NMFS. During each sector EM trip taken by a vessel, the EM system records all fishing activity on board the vessel. The vessel operator and crew sort fish and make any allowable discards within view of the cameras in accordance with the catch handling protocols described in the VMP.

MREM vessels must also participate in a DSM program. The vessel operator must notify the DSM program of its intention to sail prior to beginning a sector EM trip. Either the vessel operator or dealer must provide an offload time to the DSM program in advance of landing. The advance notice of landing and offload schedule will be dependent on the nature of the vessel's activity (*e.g.*, day boat vs. trip boat vessels) and will be defined in the vessel's VMP. The vessel operator, crew, and dealer must offload all allocated groundfish in the presence of the dockside monitor. The vessel operator and crew may not begin offloading unless a dockside monitor is present or they have received a waiver from the DSM program. The vessel operator must allow the dockside monitor access to the fish hold immediately following the offload in order to confirm all allocated groundfish were offloaded. The vessel operator and crew, or dealer personnel, must sort fish below the minimum size specified at § 648.83 by species (see *Changes from Proposed Action* below) and must separate unmarketable fish from fish below the minimum size.

In fishing years 2022 and 2023, NMFS intends to operate the dockside monitoring program for all MREM vessels. During these two years, NMFS will work with partners to provide dockside monitoring to all MREM vessels and to develop the infrastructure and requirements for an industry-funded third party dockside monitoring program.



During fishing years 2022 and 2023, NMFS will determine who will provide DSM (*e.g.*, NMFS, partner) for each MREM vessel and will assign vessels accordingly.

Subsequently, an industry-funded DSM model will be implemented and sectors will be required to contract with approved DSM providers to cover their MREM vessels.

Detailed requirements for DSM programs for sector monitoring plans will be included in future sector operations plan guidance documents. If necessary, monitoring program regulations may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

This rule also implements requirements for Northeast multispecies dealers to facilitate DSM for MREM vessels. During MREM vessel offloads, dealers must allow dockside monitors access to their premises, scales, and any fish received from vessels participating in the MREM program for the purpose of collecting fish species and weights of fish received by the dealer, fish length measurements, and the collection of age structures such as otoliths or scales. The primary dealer must retain all sublegal allocated groundfish catch in order to be weighed and sampled by the dockside monitor. Dealers must clearly mark all containers containing sublegal catch to facilitate tracking. This requirement provides a means for federally permitted dealers who purchase from MREM vessels or other federally permitted dealers who purchase from the primary dealer to demonstrate compliance with the minimum size requirements by ensuring all small fish can be traced to the landing MREM vessel.

Dealers must provide dockside monitors with access to facilities equivalent to what is provided to the dealer's staff, including: A safe sampling station, with shelter from weather, for dockside monitors to conduct their duties and process catch; access to bathrooms; and access to facilities for washing equipment with fresh water. The intent of the dealer requirements is not to require dealers to create or provide facilities that do not already exist, but to ensure dockside monitors have access to facilities equivalent to what

is available to the dealer's staff.

#### *Determining Total ASM Coverage at a Time Certain*

NMFS will announce the ASM coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS. NMFS will use all Federal funding information available at the time it makes its determination, including any remaining funding from previous appropriations, to determine the ASM coverage target for the following fishing year. For example, if Congress has not approved a final budget for the fiscal year when NMFS makes its determination of the coverage target for the next fishing year, NMFS will use the Federal funding status at that time to set the target coverage level for the upcoming year. NMFS will adjust the coverage level as necessary and appropriate based on final Federal funding and appropriations to NMFS. At this time, NMFS has sufficient funding from prior years' ASM appropriations to continue to reimburse sectors for the costs of ASM and EM in fishing year 2022.

#### *Review Process for Monitoring Coverage Targets*

The Council will undertake a review to evaluate the effectiveness of the increased ASM coverage target once two full fishing years of data are available (likely in year 3 following implementation), and periodically thereafter. The Council review process is intended to be flexible and somewhat general, but includes establishing metrics and indicators of how well the monitoring program improved accuracy while maximizing value and minimizing costs. The intent of the review process is to evaluate whether the revised groundfish sector monitoring program, and particularly the increased ASM coverage target, is meeting the Council's goal of improved accuracy of catch data and catch monitoring while maximizing the value of the data collected and minimizing the costs of the monitoring program. The Council is currently developing the review process metrics. Results of the review will support a potential future Council action to refine the groundfish sector monitoring program or revise the ASM coverage target. NMFS may

also review the sector monitoring program to assist the Council in its review and to ensure the sector monitoring program meets requirements of the Magnuson-Stevens Act, particularly the requirement to specify annual catch limits (ACLs) at a level that prevent overfishing, including measures to ensure accountability.

#### *Waivers from Monitoring Requirements*

This rule implements a system for waivers exempting individual vessels from industry-funded monitoring requirements, for either a trip or the fishing year, if coverage would be unavailable due to insufficient funding for NMFS administrative costs to meet the ASM coverage target. The waivers would include coverage for ASM and EM, including DSM for MREM vessels. As described above, NMFS will evaluate available Federal funding each year (see *ASM Coverage Target* above). If NMFS determines that there is insufficient funding to pay for its cost responsibilities, as defined in § 648.11(g)(3), for an ASM coverage target of at least 40 percent, then vessels will continue to be required to notify NMFS of all trips through the pre-trip notification system (PTNS), but NMFS will issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements. If NMFS waives monitoring requirements due to insufficient funding, as part of its review the Council will consider whether changes to the FMP are necessary to ensure effective management if the ASM coverage target is less than 40 percent.

#### *Exclusion from Monitoring Requirements for Certain Vessels Under Certain Conditions*

Amendment 23 excludes sector fishing trips fished in their entirety west of 71° 30' W. Longitude from the ASM requirement. Vessels are required to notify NMFS of all trips through PTNS, but NMFS will issue a waiver for a sector trip exempting the vessel from ASM on a trip fishing exclusively west of 71° 30' W. Longitude. Vessels on a trip excluded from the ASM requirement under this provision are required to comply with the vessel monitoring system (VMS) declaration requirements at § 648.10(g)(3), and the

transiting requirements at § 648.81(e) when east of 71° 30' W. Longitude. Vessels using EM to satisfy the sector monitoring requirement are required to have their system turned on and to comply with their VMP on all trips, including trips fishing exclusively west 71° 30' W. Longitude. The 30-day delay in effectiveness is waived for this provision (see **DATES**).

*Review Process for Vessels Excluded from Commercial Groundfish Monitoring Program Requirements*

Amendment 23 establishes a process for reviewing measures that exclude certain vessels from the groundfish monitoring program requirements based on catch composition. This includes the gear-based exclusion from the ASM requirement, implemented by Framework 55, for sector trips that exclusively fish using gillnets of 10-inch (24.5-cm) or larger mesh in the Inshore Georges Bank and/or the Southern New England Broad Stock Areas; and the Amendment 23 provision excluding sector fishing trips taken in their entirety west of 71° 30' W. Longitude (see *Exclusion from Monitoring Requirements for Certain Vessels Under Certain Conditions* above). The intent of the review process is to evaluate whether the trips excluded from the ASM requirement continue to catch small amounts of groundfish. The Council will conduct this review after two years of fishing data are available and every three years after that.

*Increased Monitoring Coverage if Federal Funds Are Available*

Amendment 23 authorizes NMFS to increase ASM coverage beyond the target coverage level selected by the Council, up to 100 percent, if NMFS determines funding is available to cover the additional administrative costs to NMFS and sampling costs to industry in a given year. This measure will apply to year 5 and later, when the ASM coverage target would otherwise be 40 percent of sector trips. Each year, NMFS will evaluate available Federal funding and determine how much Federal funding is available for the groundfish sector monitoring program and then use that in conjunction with other

available information (*e.g.*, recent monitoring costs, estimate of the number of vessels choosing EM) to calculate the ASM coverage target for the coming fishing year.

#### *Elimination of Management Uncertainty Buffer for Sector ACLs*

Amendment 23 includes a measure to set revise the management uncertainty buffer for the sector portion of the ACL for each allocated groundfish stock to zero. The revised management uncertainty buffers apply only to sectors, and not to the common pool component of the fishery, or other sub-ACLs or sub-components for any stocks. In years that the ASM coverage target is set at 100 percent, the management uncertainty buffer will default to zero for the sector sub-ACL for allocated stocks, unless the Council specifies a different management uncertainty buffer through an action for a sector sub-ACL. The need for a management uncertainty buffer for the sector sub-ACL will continue to be evaluated as part of each specification action. The process by which the Council evaluates and sets management uncertainty buffers remains unchanged and the Council may adjust management uncertainty buffers in future actions.

NMFS will make an annual determination prior to the start of the fishing year as to whether the buffers will be eliminated based on the ASM coverage target set for the fishing year and whether the Council has taken action to set a different management uncertainty buffer for a sector sub-ACL. If Federal funds are not available for 100 percent ASM coverage and a lower target coverage level is set, the management uncertainty buffers will be in place for that fishing year, subject to the Council's review as part of each specification action.

The management uncertainty buffers for the sector portion of the ACL for each allocated groundfish stock previously set by Council remain in effect for fishing year 2022 (May 1, 2022, through April 30, 2023).

#### *Sector Reporting Streamlining*

Amendment 23 specifies the Regional Administrator's authority under section

305(d) of the Magnuson-Stevens Act to modify the sector monitoring requirements previously codified at § 648.87(b)(1)(v) and the sector reporting requirements previously codified at § 648.87(b)(1)(vi) to streamline the sector reporting process. This final rule moves the requirements previously codified at § 648.87(b)(1)(v) to § 648.11(l)(10)(iii) and redesignates the sector reporting requirements previously codified at § 648.87(b)(1)(vi) as § 648.87(b)(1)(v). Any changes to the requirements in § 648.11(l)(10)(iii) or § 648.87(b)(1)(v) will be made consistent with the Administrative Procedure Act.

As discussed above (see *Electronic Monitoring*), and in the proposed rule, the Regional Administrator is using this authority to require vessels using the audit model to report discards at the sub-trip level, rather than the haul level. During development of the audit model, under an exempted fishing permit, we determined trip-level reporting was sufficient and reduced the burden on vessels.

#### *Additions to List of Framework Items*

The regulations at § 648.90 list management measures that may be changed or implemented through specifications or framework actions. This rule adds all alternatives considered in Amendment 23 to the list of FMP items that may be considered in a future framework. Specifically, this includes:

- The addition of new sector monitoring tools (*e.g.*, EM, other technologies or approaches) that meet or exceed the Council's selected monitoring standard;
- Setting vessel-specific coverage targets instead of coverage targets applicable at the sector level; and
- All the Amendment 23 measures discussed in detail above.

#### **Regulatory Adjustments and Corrections under Regional Administrator Authority**

In this final rule, NMFS is implementing several administrative changes to the regulations consistent with section 305(d) of the Magnuson-Stevens Act, which provides

that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments do not make any substantive changes to the current regulations, but are intended to improve the clarity of the regulations.

First, we revise § 648.2 to add definitions of terms related to EM that are used in the implementing regulations for Amendment 23 and clarify and consolidate definitions related to individuals that collect data for NMFS. Second, we move the sector monitoring program regulations from § 648.87 to § 648.11. Third, we revise § 648.11 to update the names of divisions within NMFS. Fourth, we revise §§ 648.2, 648.10, 648.11, 648.14, 648.51, 648.80, 648.86, and 648.202 to clarify that all regulations applicable to certified monitors also apply to monitoring staff in training. Finally, we revise § 648.14(k) to correct a typographical error where text is missing and to clarify application of the prohibitions to EM.

Finally, due to the extensive regulatory changes in this action, we are updating references throughout the groundfish regulations that will change based on the regulatory adjustments.

### **Comments and Responses**

We received 26 unique comment letters in response to the notice of availability (NOA) for Amendment 23 and the proposed rule. We also received one comment that was not germane to Amendment 23. Comments are grouped and summarized by topic.

#### *General Comments on Amendment 23*

*Comment 1:* Twelve comments generally supported approval and focused on the need for, and benefits of, the preferred alternative to set a fixed ASM coverage target of 100 percent of sector groundfish trips for 4 years. Seven comments generally opposed approval of Amendment 23 and focused on the cost to industry of the preferred alternative to set a fixed monitoring at-sea monitoring coverage target of 100 percent of

sector groundfish trips; the negative effects of those costs on industry members and ports; and the lack of a guaranteed increase in quota resulting from increased monitoring. More specifically, six commercial fishing industry organizations generally opposed Amendment 23 and one commercial fishing industry organization generally supported the action. One individual member of the fishing industry commented in support while another commented that if 100-percent monitoring is implemented, then the monitoring data must be used in stock assessments. Seven comments were submitted by students from colleges, universities, and law schools with a mix of support and opposition. Four environmental non-governmental organizations (eNGO) submitted comments supporting partial approval of the amendment. These eNGO comments supported the increase in monitoring, but opposed the default coverage target of 40 percent, setting coverage based on Federal funding, and removing the uncertainty buffer, and excluding some trips from the monitoring requirement until bias was completely removed from the fishery. One eNGO also submitted comments signed by 1,251 individual members that support implementing a 100-percent at-sea monitoring coverage target.

*Response:* On April 12, 2022, we approved Amendment 23, including all the management measures recommended by the Council. In this rule we are implementing Amendment 23 as proposed, with minor changes to the implementing regulations (see *Changes from the Proposed Rule* below). We respond in detail to specific comments on the ASM coverage target below (see *Comments on the ASM Coverage Target*).

#### *National Environmental Policy Act (NEPA) Comments*

*Comment 2:* The Northeast Seafood Coalition (NSC) commented that the EIS does not comply with NEPA requirements and raised several concerns. First, NSC claims that scoping comments were ignored in the EIS and that Amendment 23 is an attempt to justify a pre-determined political objective. NSC alleges that the analyses focus on fishing effort and enforcement, which are not related to the purpose and need of the



action. NSC argues that the alternatives were not reasonably compared to each other and the status quo. NSC also states the analyses do not provide evidence of widespread underreported catch, and that a peer review by a subset of the Council's Scientific and Statistical Committee (SSC) suggested additional analyses were needed to determine the frequency and magnitude of underreported catch. NSC also argues that increased monitoring will introduce additional bias to catch data and will not improve stock assessments. Finally, NSC highlights that the Council selected an alternative that was not in the draft EIS and that the final EIS includes analyses that were not part of the draft EIS.

*Response:* We disagree with NSC's positions. The record of development of this action demonstrates the Council did not initiate Amendment 23 with a pre-determined political objective. The Council engaged in a rigorous scoping process, including consideration of all comments before determining the purpose and need of the action. The purpose and need are clearly focused on reliable and accurate catch accounting to support the conservation and management requirements of the FMP. Amendment 23 represents a long and inclusive process, begun in 2015, of evaluating potential revisions to improve the reliability and accuracy of catch data while minimizing economic costs to industry.

A comprehensive evaluation of the alternatives in relation to the purpose and need of the action includes fishing mortality and enforcement, among other metrics, in the analyses evaluating the impacts of the different monitoring coverage alternatives. The Affected Environment is described in the final EIS based on valued ecosystem components (VECs), including: Regulated groundfish species; non-groundfish species/bycatch; the physical environment and essential fish habitat; protected resources; and human communities. VECs represent the resources, areas, and human communities that may be affected by the alternatives under consideration. VECs are the focus because they are the "place" where management action impacts occur. Within each section, the

final EIS compares all alternatives to each other and to the No Action alternative. In Amendment 23, No Action is not necessarily the same as the status quo. For instance, the No Action alternative for setting an ASM coverage target requires an annual calculation that may range up to a 99-percent coverage target for which industry is responsible for costs as detailed in the regulations. However, the status quo is that the coverage target in fishing year 2021 was 40 percent of sector groundfish trips and sectors were reimbursed for all industry monitoring costs.

Bias analyses conducted by the Council's Groundfish Plan Development Team (PDT) were peer reviewed by a subset of the Council's SSC. That peer review determined that, in aggregate, the analyses demonstrated differences both in discarding behavior and in fishing behavior between observed and unobserved trips; and that the analyses suggest that discard estimates from observed trips should not be used to estimate discards from unobserved trips. The peer review noted that the analyses did not quantify the magnitude of unaccounted discards and that, with additional refinement and testing, two of the analyses could be used to provide estimates of the total quantity of unreported discards relative to annual catch limits or acceptable biological catches. In response to the recommendations of the peer review, the Council tasked the Groundfish PDT with further work to provide an estimate of an upper bound of the potential magnitude for missing legal-sized discards of Gulf of Maine cod in order to provide some characterization of the bounds of the discarding problem, and contracted an additional analysis for the final EIS titled "Evaluating the Impact of Inaccurate Catch Information on New England Groundfish Management." The Council considered the analyses showing that current coverage could not provide a sufficiently accurate estimate of what is currently unseen on unobserved trips. Indeed, Amendment 23 seeks to improve the accuracy of catch information, which is necessary to ensure catch accountability and meet a core Magnuson-Stevens Act requirement to prevent overfishing. The Council's choice to seek

further data that should be sufficient for assessing the magnitude of bias by increasing at-sea monitoring coverage up to 100 percent was reasonable.

Comprehensive monitoring with coverage up to 100 percent of trips will minimize bias in catch data by minimizing the opportunity for differences between observed and unobserved fishing activity. Removing bias from catch data improves one source of data included in stock assessments, but it is impossible to predict the outcomes of future stock assessments prior to acquiring unbiased or minimally biased data.

Additional analyses were completed during the comment period of the draft EIS and were included in the final EIS, but this is neither unusual generally, nor problematic in this instance. The Council created and selected a new alternative during the meeting where it made a final decision, but the new alternative was a combination of an existing alternative with an additional measure that fell within the range of the other alternatives evaluated in the draft EIS and did not introduce any new concepts or impacts. This new alternative was created to incorporate and address public comments.

#### *Executive Orders (E.O.)*

*Comment 3:* NSC commented that the amendment is not consistent with E.O.s 13777, 13840, and 13921. Specifically, NSC argued that Amendment 23 is inconsistent with E.O. 13777 because it would eliminate jobs, is unnecessary, would be ineffective, and has costs exceeding the benefits. NSC also alleged that Amendment 23 would not facilitate economic growth of coastal communities and promote ocean industries and would not ensure productive and sustainable use of ocean, coastal, and Great Lakes waters, as required by E.O. 13840. Last, NSC alleged Amendment 23 was in direct contravention of E.O. 13921, which required the Council to submit a prioritized list of recommended actions to reduce burdens on domestic fishing and to increase production within sustainable fisheries, because it would increase burdens on domestic fishing and decrease production by small vessels.

*Response:* We disagree. E.O. 13777 was revoked in January 2021. E.O.s 13840 and 13921, cited by the NSC, are consistent with the requirements of the Magnuson-Stevens Act's national standards and procedures for developing and implementing fishery management plans and amendments. None of the E.O.s cited by NSC eliminate or revise the requirements or authorities of the Magnuson-Stevens Act. Amendment 23 is consistent with the Magnuson-Stevens Act requirements as described in the proposed rule and this final rule. Further, Amendment 23's development, conservation and management measures, and implementation are consistent with the policies and requirements of E.O.s 13840 and 13921. Amendment 23 facilitates long-term economic growth by improving our ability to prevent overfishing and achieve optimum yield on a continuing basis (see response to Comment 5, below). As noted throughout this rule and the proposed rule, Amendment 23 measures are necessary to improve catch documentation in a cost-effective manner that is expected to improve the fishery's efficiency, productivity, and competitiveness.

#### *National Standard (NS) 1 Comments*

*Comment 4:* NSC commented that Amendment 23 is contrary to NS 1 because the economic analyses do not show that Amendment 23 will achieve optimal yield.

*Response:* We disagree that Amendment 23 is contrary to NS 1. NS 1 states "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." Optimum yield is the maximum sustainable yield as reduced by economic, social, or ecological factors, with the most important limitation being the requirement to prevent overfishing. Nothing in Amendment 23 prevents the Northeast Multispecies FMP from achieving optimum yield. To the contrary, Amendment 23 measures are intended to improve the long-term management of the fishery, including collecting more accurate and precise information to improve our ability to prevent overfishing and achieve optimum

yield on a continuing basis. Further, NS 1 guidelines require the setting of status determination criteria (e.g., overfishing level, acceptable biological catch, annual catch limit) and accountability measures, and accurately setting these determination criteria relies, in part, on the improved information that Amendment 23 will provide. Because of the bias in observer data, documented in the final EIS, it is not possible at this time to calculate an ASM coverage target less than 100 percent that would eliminate or minimize bias sufficiently to ensure catch accountability because the current catch data are not representative of the entirety of the sector fishery. Setting the ASM coverage target as high as possible, up to 100 percent, is expected to provide coverage sufficient to better assess the magnitude and nature of the bias that exists at current coverage levels that available information does not allow us to quantify. All of this information will better inform future management and coverage levels for the fishery. Thus, the measures in Amendment 23 were selected to improve the FMP's ability to meet NS 1 requirements.

#### *NS 2 Comments*

*Comment 5:* NSC asserted that there is insufficient information in the draft EIS to show increased monitoring would improve assessments and management performance or that under-reported catch was widespread. NSC also argued it was inconsistent for Amendment 23 to raise concerns about potential high bycatch of stocks that are low in abundance. Further, NSC raised concern that the EIS states catch misreporting has occurred in the past, but uses data from those years to analyze economic impacts. Northeast Fishery Sector (NEFS) XII alleged that the analyses are flawed and not based in economic reality.

*Response:* Amendment 23 is consistent with National Standard 2's requirement that "Conservation and management measures shall be based upon the best scientific information available." The analyses included in the final EIS are based on the best scientific information available and are consistent with the Information Quality Act. The

analyses in the Amendment 23 final EIS were prepared using data from accepted sources, and the analyses have been reviewed by members of the PDT and by the Council's SSC, where appropriate, including a peer review of the bias analyses. NSC does not identify any objective or peer-reviewed information that the Council or NMFS ignored. The analyses use all available fishery data and information to predict economic impacts of the various alternatives in Amendment 23 on the fishing industry. The Council acknowledged that available fishery-dependent data is biased and undertook Amendment 23 specifically to address the problem of bias in fishery-dependent data. While it is impossible to predict the effect of more accurate data on future assessments, ensuring catch accountability and minimizing bias will reduce uncertainty in the fishery dependent data used in assessments as well as Council evaluation of economic effects of future actions. In addition to fishery-dependent data, assessments that inform management of the fishery use fishery-independent data that is not subject to observer bias. NS 2 guidelines acknowledge that there may be gaps in data, or uncertainty, along with the need to weigh relevance, inclusiveness, objectivity, transparency, timeliness, and verification and validation of data to the extent possible. Given these considerations, the Council process and final EIS information include sufficient analyses and the best available scientific information that support Amendment 23's measures. The economic analyses in the final EIS look at the effects of increased monitoring, with and without government subsidies, at the vessel, port, and sector level. Members of the public could use this information to estimate costs either generally or for their specific fishing business.

We disagree with NSC's premise that it is impossible for the commercial fishery to have high interactions with an overfished stock in need of rebuilding. While species differ, species managed under the Northeast Multispecies FMP, including cod, are known to contract their geographic range in response to declining population size and to

congregate during various life stages, including during spawning. Improved monitoring will contribute to determining the level of interaction between the fishery and stocks.

#### *NS 6 Comments*

*Comment 6:* NSC commented that Amendment 23 is contrary to NS 6 because the EIS fails to assess the changes in behavior that are likely to result from its increased monitoring coverage. Specifically, NSC asserts that the baseline information that would be collected by comprehensive monitoring to inform a review of the monitoring program would not be an accurate reflection of the fishery and would not help to improve the management of the fishery. Further, NSC commented that requiring all vessels to meet the 100-percent ASM requirement is not fair and equitable.

*Response:* We disagree that Amendment 23 is inconsistent with NS 6's requirement to take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. NS 6 guidance acknowledges uncertainty that may arise from changed fishing behaviors and notes that data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for uncertainty buffers. Amendment 23 intends to acquire additional monitoring information for analysis to address uncertainty in current catch information consistent with NS 6.

Available analyses identified several biases in the current monitoring program and demonstrated monitoring data is not representative of the whole fishery. Observed trips are not representative of unobserved trips and monitoring data from observed trips cannot be extrapolated to the whole of the fishery, unless the level of observed trips is high enough to address biases that exist with lower coverage levels. NSC argues that higher ASM coverage introduces new bias because it influences where and when fishing occurs, and the stocks fishermen will target. However, NSC also argues that the final EIS contains no information on potential bias from achieving less than 100-percent coverage

due to either a lack of Federal funds in years 1-4, or logistical challenges, or when the ASM coverage target defaults to 40 percent beginning in year 5. Requiring ASM on all sector groundfish trips would minimize, help identify or quantify, or eliminate monitoring bias.

NSC provides no suggested alternative for sufficiently addressing bias. NSC's notion that more comprehensive monitoring would only provide biased information, and is therefore improper, in effect argues that any level of monitoring is faulty and improper because it changes fishing behavior. NSC's position acknowledges the differences in observed and unobserved trips that Amendment 23 is designed to address, but its argument is inconsistent with NS 6. Without offering suitable alternatives, its position unacceptably leaves the fishery without any means of addressing the uncertainty arising from bias or ensuring catch accountability. Instead, Amendment 23 is responsibly seeking further information that is necessary to better account for variations and contingencies in the fishery. Amendment 23's approach is consistent with NS 6 guidance that "continual data acquisition and analysis will help the development of management measures to compensate for variations...." In addition, Amendment 23 provides for variations in use of monitoring by authorizing the use of EM as an alternative to human ASM.

NSC seems to be misconstruing discussion of fairness and equity in the EIS with its concern that 100-percent monitoring would not be fair and equitable. The analysis in the EIS describes that if monitoring increases compliance with the FMP, it would create a fairer and more equitable fishery because all participants would be held to the same standards, thus preventing misreporting or illegal discarding behavior that results in an unfair competitive advantage. The additional observed information provided by Amendment 23 may also provide the basis for identifying inequities and for a more accurately managed fishery that benefits all participants.



## *NS 7 Comments*

*Comment 7:* NSC and representatives of NEFS XII commented that Amendment 23 is not consistent with National Standard 7 because it does not contain a cost-benefit analysis. NSC also commented that the EIS is inadequate because the economic analyses consider gross revenues, rather than net revenues, and it lacks a break-even analysis to justify vessel monitoring costs. Further, NSC commented that the EIS fails to demonstrate that Amendment 23's changes to the monitoring program justify its costs, does not allow the public to ascertain clearly the types and levels of burdens on different groups, and does not explain why monitoring coverage levels measures considered unnecessary in previous actions were selected by the Council in Amendment 23. Finally, NSC commented that the EIS fails to justify industry costs by providing meaningful benefits to industry members and science, arguing it is irrational to suggest that improved data resulting from a reduction in observer bias could lead to improved economic outcomes through improved stock assessments.

*Response:* We disagree with the commenters that Amendment 23 is inconsistent with NS 7. NS 7 states, "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." NS 7 does not require a formal cost-benefit analysis. NS 7 guidance states that "supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost-benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate."

Amendment 23 evaluates the differences between the alternatives and supports the Council's choice as the most practicable means of ensuring catch accountability. The benefit of Amendment 23 is providing sufficient information and a means of meeting NS 1 requirements to set status determination criteria (*e.g.*, overfishing level, acceptable biological catch, annual catch limit) and to ensure catch accountability to prevent overfishing. Analyses in the final EIS show that the current system for setting ASM coverage targets, including achieving a 30-percent coefficient of variation on discard estimates, is not effective for providing accurate catch data for catch accountability. Thus, the resulting data could adversely affect core Magnuson-Stevens Act requirements. As a result, the EIS includes a cost efficiency analysis, rather than a formal cost-benefit analysis, that examines the most efficient way to achieve the levels of monitoring considered in Amendment 23 for ensuring catch accountability, and the effects on the groundfish fishery participants. The economic analyses in the EIS examine the effects of increased monitoring, with and without government subsidies, at the vessel, port, and sector level for the different alternatives. The economic analyses of the costs for the alternatives includes both static and dynamic approaches. The dynamic approach reports operating profit (net revenues). Further, Amendment 23 caps the level of coverage for which industry would pay at 40 percent, which minimizes the economic impacts on vessels while still meeting the critical need for monitoring to improve conservation and management of the groundfish fishery. These considerations were thorough and helped identify and evaluate differences between the alternatives in order to minimize costs to the extent practicable, consistent with NS 7.

#### *NS 8 Comments*

*Comment 8:* Four comments included concerns about Amendment 23 meeting the requirements of NS 8. NSC commented that the community impacts were hard to understand, that it was counterintuitive to conclude that gross ex-vessel revenues would

increase due to increased monitoring, that Amendment 23 does not provide for sustained participation by communities, and that if the required monitoring is not economically viable for every industry member, then distributional and allocative impacts must be considered. Another comment stated the EIS had not adequately considered the social and economic harm to fishing communities of the EM provision, and urged us to make EM mandatory and to subsidize EM start-up costs for low-engagement fishing communities. NEFS XII commented that the economic analyses are not based in economic reality because a 40-percent coverage target is not affordable without government subsidy and noted the EIS did not consider the benefits of local seafood being sold and consumed locally. NEFS X and XIII commented that Amendment 23 would consolidate the fleet, force out small family operators, and cause the permanent loss of shore side support industries. NSC also commented that Amendment 23 is contrary to the Council's fleet diversity policy.

*Response:* We disagree that Amendment 23 is inconsistent with NS 8. NS 8 states, "Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." NS 8 requires consideration of the importance of fishery resources consistent with the conservation requirement of the Magnuson-Stevens Act. The NS 8 guidance specifies that deliberations regarding the importance of fishery resources to fishing communities must not compromise the achievement of conservation requirements and goals of the FMP.

The potential for increased industry costs associated with monitoring or even some consolidation is consistent with the FMP's fleet diversity goal. The groundfish monitoring plan goals include achieving coverage levels sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability. The FMP's fleet diversity goal does not ensure the participation of every participant, but rather seeks to provide flexibility to enhance fleet viability. Amendment 23 measures were developed to provide the balance that this goal seeks. It provides alternative means of monitoring that have differing costs and a sector may choose the combination of human ASM, audit EM, and MREM that best suits the operations of the sector and its member vessels. It seeks to minimize those costs when Federal funding is unavailable. It includes an evaluation that is expected to provide an opportunity to assess the effects on bias, fleet operations, and the benefits or costs of this program that does not exclude an assessment of fleet viability.

As discussed above, the economic analyses in the EIS consider the effects of increased monitoring, with and without government subsidies, at the vessel, port, and sector level. The analyses forecasted that less-profitable fishing operations would lease quota to more-profitable operations with a net result of increasing gross revenues for the fishery. The FMP goals include managing the stocks at a sustainable level and creating a management system that supports a fleet capacity commensurate with resource status, as well as an objective to maintain, to the extent possible, a diverse groundfish fishery, including different gear types, vessel sizes, geographic locations, and levels of participation. Amendment 23 maintained these goals and focused on goal 1 of the groundfish monitoring program: Improve documentation of catch. Amendment 23 looked at a range of options that adjust the current monitoring program to improve accounting and accuracy of collected catch data. The range included variable and fixed target coverage levels based on catch or trips, human ASM, two types of EM, and flexibility to

allow sectors to choose the tools used to meet the sector monitoring requirement.

Ultimately, the Council chose a fixed coverage target as high as could be achieved at zero cost to industry to form the basis of an analysis to further evaluate the fishery and its monitoring program. The Council also set a new lower cap on the coverage target that will be set when industry is paying for monitoring, as well as approving two EM models that sectors could choose to use to provide for sustained participation and minimize adverse economic impacts on communities to the extent practicable.

#### *NS 10 Comments*

*Comment 9:* NSC commented regarding NS 10 that the safety implications and incentives of the various alternatives were not compared and stated that vessels may choose to fish in dangerous weather to minimize monitoring costs associated with waiting out weather.

*Response:* We disagree that Amendment 23 is inconsistent with NS 10. NS 10 states, “Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.” NS 10 requires management actions include measures, to the extent practicable, that avoid situations that may create pressures for fishermen to fish under conditions they would otherwise avoid due to safety. For practicability, measures must be consistent with the legal and practical requirements of conservation and management of the resource. Amendment 23 includes an ASM coverage target that is conditioned on the availability of Federal funding for NMFS’ and industry costs. It provides for the use of human ASM and EM as an alternative to ensure catch accountability and affordability, to the extent practicable. In the event that reduced Federal funding leads to industry paying for its costs, the Council’s preferred alternative caps the level of ASM coverage industry would pay for at 40 percent. Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. NSC commented that vessels carrying an observer might choose to continue

fishing in bad weather to earn revenue to pay for monitoring costs when Federal funding is not available. Importantly, vessels may also choose to postpone a trip, or can end a trip in progress at any time, if safety is a concern. Vessels may also choose to adopt EM and eliminate the costs associated with having a human at-sea monitor aboard during a weather layover.

*Comments on the ASM Coverage Target*

*Comment 10:* NSC commented that NMFS had previously argued in court that the incremental biological benefits of 100-percent monitoring did not justify the costs and that EM was not a viable option, and asked why 100-percent monitoring was now economically viable and beneficial.

*Response:* In *Oceana, Inc. v. Ross*, 275 F.Supp.3d 270, 290-91 (D.D.C. 2017) (Oceana), NMFS argued that EM was, at that time, not sufficiently developed or suitable to be a viable replacement for human at-sea observers for the purpose of the standardized bycatch reporting methodology (SBRM). The SBRM is distinct from the groundfish sector monitoring program as it applies universally to all federally managed fisheries in the Greater Atlantic region rather than just to groundfish sector vessels. The data collected by SBRM observers include information (such as weights of fish, scales, and otoliths, among other things) that cannot effectively be collected via EM systems. Because of this, even groundfish sector vessels electing to use EM as an alternative to human ASM must still carry an SBRM observer when selected. Continued development of EM specifically for the groundfish sector fleet since the time of that case has resulted in two EM models that we have deemed suitable as alternatives to human ASM for the groundfish sector monitoring program. Specifically, the audit model requires fishermen that choose the model to place all discards on a measuring board in view of the camera to allow capture of length information while MREM prohibits discards of allocated groundfish stocks and is coupled with DSM to capture information not obtainable by

cameras. Further, this rule does not require any vessel to use EM, but implements the Amendment 23 provision allowing a sector to choose the combination of human ASM, audit EM, and MREM that best suits the operations of the sector and its member vessels.

In addition, since the lawsuit, new information and analysis raised questions and concerns about the efficacy of the groundfish sector monitoring program. Most importantly, bias analyses conducted by the PDT demonstrated differences both in discarding behavior and in fishing behavior between observed and unobserved trips at fleet-wide coverage levels that were generally below 35 percent. The analyses suggest that discard estimates from observed trips should not be used to estimate discards from unobserved trips when coverage rates are at low levels. The Council is revising the groundfish sector monitoring program, including increasing the ASM coverage target up to 100 percent of trips, to address bias and inform future action.

*Comment 11:* NSC commented that the EIS did not provide evidence to support a conclusion that substantially increased levels of monitoring would meet the stated goals of the action to improve groundfish stock assessments and management of the fishery, or that unmonitored fishing activity was negatively affecting resource conservation.

*Response:* We disagree that the ASM coverage target implemented by Amendment 23 is inconsistent with the stated purpose and need. Amendment 23 states the purpose of the action is to "...adjust the current monitoring program to improve accounting and accuracy of collected catch data. It is the Council's intent that the catch reporting requirements are fair and equitable for all commercial groundfish fishermen, while maximizing the value of collected catch data, and minimizing costs for the fishing industry and the National Marine Fisheries Service." Amendment 23 states the need is "...to implement measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is precise and accurate representation of catch (landings and discards). Accurate catch data are necessary to

ensure that catch limits are set at levels that prevent overfishing and to determine when catch limits are exceeded.”

Amendment 23 maintains the current goals and objectives of the groundfish monitoring program, but addresses Goal 1 to improve documentation of catch, described as “improved catch accounting” during the scoping process. The objectives associated with that goal are: 1) determine total catch and effort, for each sector and the common pool, of target or regulated species; and 2) achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability. Amendment 23 adopts the highest ASM coverage target practicable, and provides for the use of EM, to inform future changes to the monitoring program and ensure catch accountability while balancing the effects of monitoring costs on the fishery. As discussed above, the Council chose a fixed coverage target as high as could be achieved at zero cost to industry to reliably and accurately estimate catch and to form the basis of an analysis to further evaluate the fishery and its monitoring program. The Council also set a new lower cap on the coverage target that will be set when industry is paying for monitoring, as well as approving two EM models that sectors could choose to use to provide for sustained participation and minimize adverse economic impacts on communities to the extent practicable.

Amendment 23 measures are meant to improve the long-term management of the fishery, including collecting more accurate and precise information to improve our ability to prevent overfishing and achieve optimum yield on a continuing basis. As discussed above, analyses of bias suggest that discard estimates from observed trips at low coverage levels should not be used to estimate discards from unobserved trips. Thus, when observer coverage levels are low, catch from unmonitored fishing cannot be reliably estimated from observed trips. NS 1 guidelines require the setting of status determination



criteria, and accurately setting these determination criteria relies on the improved information that Amendment 23 will provide.

*Comment 12:* The Cape Cod Commercial Fishermen's Alliance (CCCFA) supported the increased monitoring required under Amendment 23 and asserted that uncertainty over accurate and precise catch information and an inconsistent survey have combined to make management of the Northeast multispecies complex unable to rebuild key stocks. The Nature Conservancy (TNC) supported replacing the current method for determining the ASM coverage target for deploying human at-sea monitors with a fixed coverage target and setting the ASM coverage target at 100 percent for 4 years, but opposed setting the ASM coverage target based on funding and argued that target coverage rates should be based on the level of monitoring needed to achieve the goals and objectives of Amendment 23. The Environmental Defense Fund (EDF) and the Conservation Law Foundation (CLF) supported the 100-percent coverage target, but opposed defaulting to 40-percent coverage in the absence of Federal funding. CLF also submitted a comment on behalf of 1,251 members who had individually signed a letter supporting the 100-percent monitoring target. EDF highlighted that the final EIS stated that statistical analyses "cannot quantify the differences between observed and unobserved trips in a way that allows for either a mathematical correction to the data or a survey design that resolves bias." EDF went on to interpret this to mean there is no mechanism to account for observer coverage bias except to eliminate it. Oceana supported the coverage target, but commented that 100-percent coverage would not completely remove bias due to unobserved tows or hauls. NSC opposed the coverage target based on issues related to NEPA and the National Standards (see above) and raised a concern that if the target coverage is not achieved there is no defined plan to ensure the monitoring program provides unbiased data.

*Response:* We agree that sector monitoring programs must ensure that monitoring coverage is sufficient for monitoring catch and discards, and that the current method for determining the ASM coverage target based on a CV analysis should be replaced for total catch accounting under the sector program. Analyses included in the final EIS documented that using a 30-percent CV was an insufficient basis for determining the necessary at-sea monitoring coverage target, without modification, because observer bias resulted in observed trips not being representative of unobserved trips. This differs from using a CV to determine review rates for EM programs where cameras are on and catch handling protocols are followed on 100 percent of groundfish trips; and from the SBRM program where there is limited incentive for vessels to fish differently on trips carrying an observer than on trips when without an observer. Using a method based on a CV to determine ASM target coverage levels is not effective to estimate total catch because observed trips at low levels of coverage are not representative of unobserved trips and there is an incentive for vessels to fish differently when carrying an at-sea monitor than on trips without an at-sea monitor. Because the catch data collected from low coverage levels are not representative of the entirety of the sector fishery, we cannot calculate an ASM coverage target that we can be reasonably confident would eliminate or minimize bias sufficiently to ensure catch accountability. The Council chose a fixed ASM coverage target of up to 100 percent to address bias by establishing a baseline of accurate and precise catch information for the fishery. The ASM coverage targets are coupled with a review process to evaluate the monitoring program once two full years of data are available. The preferred alternative adopts the highest level of ASM practicable, while balancing the effects of monitoring costs on the fishery, to inform future changes to the monitoring program and ensure catch accountability.

We disagree that the ASM coverage target should be 100 percent of trips regardless of Federal funding and that the 40-percent default coverage target should be

disapproved. Monitoring coverage targets should be designed to achieve their stated purpose, ensuring catch accountability in as cost-effective manner as practicable. We have learned that setting ASM coverage targets based on coefficients of variation does not account for bias. The Council approved a new manner of determining ASM coverage targets designed to provide sufficient data to ensure catch accountability and determine what targets might be suitable under 100 percent.

Monitoring is always dependent on the availability of Federal funds, because even under industry-funded monitoring programs, NMFS incurs costs associated with administering monitoring programs. The coverage target in Amendment 23 is 100 percent of trips, so long as NMFS and industry costs for that coverage are funded with Federal appropriations. The 40-percent default coverage target in years 1-4 is the point at which available Federal funding would be solely applied to NMFS' costs in the event that a lack of funding would otherwise result in less than 40-percent coverage. ASM coverage targets of at least 40 percent on a consistent basis would be an increase from attained coverage levels to date.

Importantly, EM is available as an alternative to human ASM to ensure catch accountability. Sector monitoring programs must be satisfactory for monitoring catch and discards. This includes the potential use of EM as an alternative or if determined to be necessary as part of a future evaluation.

*Comment 13:* CCCFA supported NMFS covering industry costs when Federal funding is available because the industry is struggling economically and needs to minimize costs until groundfish stocks are rebuilt. One fisherman commented that basing the ASM coverage target on Federal funding creates an incentive for the industry to try to reduce funding for NMFS so that coverage levels will decrease. The commenter suggested the Council should establish an affordable level of industry monitoring costs,

similar to the model used in the scallop fishery, to obtain the long-term benefits of accountability.

*Response:* We agree that the Federal funds appropriated for industry costs will facilitate industry transitioning to comprehensive monitoring. Making the coverage target contingent on Federal funding for industry costs balances the need for improved monitoring with the economic effects to the fishery. Combined with the option for vessels to use EM and removing the management uncertainty buffers from the sector portion of the ACL, the increased cost to industry is reduced. ASM coverage targets of at least 40-percent on a consistent basis would be an increase from attained coverage levels to date. Higher ASM coverage, even for a limited time, along with data from EM, could improve the cost-effectiveness of the monitoring system by providing a baseline of accurate and precise catch information for the evaluation of the program. Amendment 23 includes a requirement to evaluate the efficacy of sector monitoring coverage rates, to occur once two full fishing years of data is available. The intent of that review is evaluation of whether the monitoring program is meeting the goal of improved accuracy of catch data, while maximizing value and minimizing costs of the program through a future action. The Council wants to be sure enhanced levels of monitoring data are working as intended and the increased costs to industry are providing expected benefits from improved accuracy and reduced potential for bias in catch data. The Council could choose to reevaluate the funding structure of the groundfish sector monitoring program as part of that review.

*Comment 14:* Oceana commented that any assumptions of completely removing bias by at-sea monitors observing 100 percent of trips is flawed and should be amended. Oceana specified that no observer can observe every tow or haul, and noted unobserved fishing happens on trips carrying observers, particularly on multi-day trips where observers are limited in the number of hours that they can work.

*Response:* We agree that requiring a single human at-sea monitor on 100-percent of trips does not assure every tow or haul is observed. However, we disagree that the language of the final EIS and amendment needs to be revised. The amount of catch and discards that an at-sea monitor may miss for various reasons (e.g., fish being discarded while the at-sea monitor is not looking or is below deck) does not necessarily introduce bias because it does not change where and how vessels fish. Also, only some trips (33 percent in 2021) occur over multiple days where a human at-sea monitor will sleep or otherwise does not observe catch or discards. Further, some vessels, including a portion of vessels taking trips over multiple days, will be using EM rather than human at-sea monitors. All vessels using EM are required to have the camera system operational for the entirety of all sector groundfish trips. In particular, because all sector vessels are subject to human observer coverage as part of the SBRM, there may be opportunities to evaluate the possible effect by comparing EM and observer data on trips where a human at-sea monitor does not observe all tows. While 100-percent monitoring coverage might not completely remove the possibility for unobserved catch and discards, it does meet the Council's goal "... to achieve a monitoring coverage level that ensures precise and accurate catch (landings and discards) estimation and minimizes the potential for biases in the estimates."

*Comment 15:* NSC commented in opposition to the 40-percent ASM coverage target in the absence of Federal funding and argued that there was no basis to conclude that industry could afford to pay for 40-percent coverage. NEFS XII commented that the sector could not afford the current cost of monitoring without the subsidy provided by Federal appropriations, and that the sector's contracted ASM cost equates to a standardized daily cost of 13 to 18 percent of gross revenue on every trip.

*Response:* The Council selected a minimum ASM coverage target of 40 percent in the event that Federal funds are not available in a given year to ensure accurate catch

information is still provided while addressing concerns about industry costs. The minimum target level of 40 percent will be funded by either sectors (if no Federal funds are available) or a combination of sectors and Federal funds. Making the coverage target contingent on Federal funding for industry costs balances the need for improved monitoring with the economic effects to the fishery. In years with a 40-percent ASM coverage target, Federal funding would be used to first pay NMFS costs for administering the monitoring programs and then support as much of industry costs as possible. Combined with the option for vessels to use EM, the increased cost to industry is mitigated to the extent practicable. Further, this change from the current maximum possible industry-funded ASM coverage target of 99 percent represents a reduction in the maximum monitoring costs that industry could have to pay. Further, all human observer coverage assigned to sector trips under the SBRM counts towards achieving the human ASM coverage target and this coverage is Federally funded.

A 40-percent ASM coverage target is an improvement from the average ASM coverage target from fishing years 2010 - 2017, which was 22 percent. The effects of 40-percent coverage on regulated groundfish would fall somewhere between the impacts of 25-percent coverage and 50-percent coverage, which were analyzed in the EIS. Thus, 40-percent coverage would have neutral to low positive effects on groundfish stocks, relative to No Action, because this target coverage level would represent an increase from the average realized coverage. However, with 40-percent coverage, there may be sources of unaccounted mortality in the fishery and an incentive to discard fish illegally when not monitored.

*Comment 16:* NSC commented that the proposed action is inconsistent with the regulatory requirements for an industry-funded monitoring program because the EIS did not analyze whether individual participants or ports could afford the industry costs associated with a 40-percent coverage target, and that not all participants could pay for

the monitoring while remaining profitable. In particular, NSC alleged that Amendment 23 threatens the continued existence of the fishery and will diminish the net benefits to the nation.

*Response:* The industry-funded monitoring regulations at 50 CFR 648.11(g) apply to the development of new industry-funded monitoring programs by the Council. These regulations were implemented after the implementation of the groundfish sector monitoring program. Nevertheless, the groundfish sector monitoring program is consistent with the industry-funded monitoring provisions.

The groundfish sector monitoring program is necessary to monitor catch, discards, and utilization of sector annual catch entitlement (ACE). It helps ensure catch accountability and prevent overfishing as required by the Magnuson-Stevens Act. Objective design criteria are enumerated in § 648.11(l). As discussed above, the EIS includes a cost efficiency analysis that examines the most efficient way to achieve the levels of monitoring considered in Amendment 23 for ensuring catch accountability, and the impacts on the groundfish fishery participants. Further, the Council's preferred alternative caps the level of coverage industry would pay for at 40 percent, which minimizes the economic impacts on vessels while still meeting the critical need for monitoring to improve conservation and management of the groundfish fishery. Additionally, when the selected coverage target is combined with other measures in Amendment 23 (specifically EM and removal of management uncertainty buffers), the increased costs to industry are minimized. We will continue to grant waivers from the monitoring requirement for logistical reasons and in the event that coverage is not available due to a lack of Federal funding for NMFS' costs. The sector monitoring program requires sectors to directly contract with monitoring service providers rather than establishing a cost collection. Standards for monitoring providers are enumerated at § 648.11(h) and (l)(10)(ii). Additional implementation measures are also specified in §

648.11(1). Last, the groundfish sector monitoring program revised by Amendment 23 applies only to vessels participating in the voluntary sector catch share program. Each year, each vessel issued a limited access Northeast multispecies permit may opt to fish as part of a sector or to fish as part of the common pool fishery that is managed with a combination of effort controls and does not have an industry-funded monitoring requirement.

*Comment 17:* NSC commented that the impacts of the new coverage target are unclear because the status of Federal funding for later years is unknown.

*Response:* We agree that it is not possible to predict precisely the exact costs of the coverage target in future years because the coverage may fluctuate for the industry as a whole and individual sectors or vessels; however, the EIS explicitly discusses that the economic effects of the coverage target depend on the availability of Federal funds to reimburse sectors for monitoring costs and the actual coverage targets set in each year. If there is no Federal funding to subsidize industry monitoring costs, then industry would be responsible for the full costs of a 40-percent coverage target, except for any observer coverage provided under the SBRM. The EIS uses both a linear model and a dynamic model to estimate costs to industry in this scenario. If full subsidy continues at any coverage target, then the effects would be neutral relative to status quo, because in past years most monitoring costs were reimbursed. While direct economic effects may be offset by any subsidy available for monitoring, indirect negative effects may also occur, if monitoring creates additional tasks or delays in at-sea operations. Overall, if there is no subsidy, fleet-wide ASM costs are estimated to be approximately \$2.09 million per year, a negative impact relative to No Action (\$0.9 million), due to the increase in the coverage target from the average coverage target in recent fishing years. Economic effects may be positive relative to No Action if there is more than \$1.2 million available for monitoring, since if any less is available, then the No Action would be less expensive. The costs of



monitoring of up to 40 percent coverage will not be uniformly borne by the fleet because those fishing more will generally pay more. There are also differences in how much of the total coverage will be accounted for by SBRM observer coverage on a sector and individual vessel level. In general, those fishing less also earn less on groundfish trips and groundfish trips may represent a higher proportion of total groundfish revenue as compared to higher grossing vessels. In general, vessels with low engagement in the fishery tend to be smaller and are also less reliant on groundfish fishery revenue, so effects from increases in monitoring coverage may mean those vessels are more likely to shift into other fisheries and lease their share of sector quota to active participants. Costs by homeport, engagement level, vessel size, and sector were estimated and included in the EIS. These are thorough estimates that inform the public sufficiently of potential costs and benefits of the action.

*Comment 18:* NSC alleges that there is no analysis or acknowledgment in the EIS that the increased monitoring will drive many current participants permanently out of the fishery with corresponding impacts on small coastal fishing communities with limited opportunities for alternate employment.

*Response:* We disagree. As NSC points out elsewhere in its comments, the EIS states that coverage levels based on a percentage of trips may have effects that are “disproportionately negative for commercial groundfish sector program day boat participants, typically those operating smaller vessels or vessels contributing relatively small proportions to overall groundfish landings.” Costs by homeport, engagement level, vessel size, and sector were estimated and included in the EIS. The EIS specifically highlights the ports that may have relatively greater negative social impacts as a result of monitoring coverage on a higher percentage of trips.

*Comment 19:* CCCFA commented that NMFS must ensure that there is increased observer capacity in order to minimize waivers and meet human ASM targets to achieve

a robust monitoring program. NEFS V and XI commented that achieved ASM coverage levels will not reach or approach 100 percent due to existing logistical issues and ASM staffing.

*Response:* We agree that we must increase observer capacity and that in certain circumstances we may not meet a monitoring coverage target, particularly in the first year as we ramp up coverage and may face logistical complications. We have increased the number of at-sea monitor training sessions and contracted out training to increase the number of certified at-sea monitors available to support the increased ASM coverage target. Currently, there are 83 trained at-sea monitors, we have the potential this year to train 80 additional new at-sea monitors, and the potential to cross train an additional 40 observers or industry-funded scallop observers to be at-sea monitors. We will continue to issue waivers from ASM for selected trips in specific circumstances, including logistical reasons such as a late observer, safety, or if an observer or at-sea monitor is not available to cover the trip, consistent with current practice.

The Council chose a fixed ASM coverage target of up to 100 percent to address bias by establishing a baseline of accurate and precise catch information for the fishery, but the Council designed the groundfish sector monitoring program to have an ASM coverage target, and to allow waivers to be issued, because it did not wish to create a requirement that could prevent vessels from participating in the groundfish fishery if monitoring coverage was not available. The ASM coverage target will be set at the maximum level for which there are sufficient Federal funds to support all NMFS and industry costs. ASM coverage targets of at least 40-percent on a consistent basis would be an increase from attained coverage levels to date. Higher ASM coverage, even for a limited time, along with data from EM, could improve the cost-effectiveness of the monitoring system by providing a baseline of accurate and precise catch information to be used in the evaluation of the program that is planned.

The availability of EM also provides a potential option for sector monitoring programs to meet their obligation to develop and implement an ASM or EM program that is satisfactory to, and approved by, NMFS for monitoring catch and discards and utilization of sector ACE sufficiently to ensure catch accountability.

*Comment 20:* NEFS V and XI commented that higher ASM coverage targets are necessary, but suggested that a 100-percent coverage target would change the landscape of the Northeast groundfish fishery permanently. They noted that, during the development of Amendment 23, discussion centered on bias of observed versus unobserved groundfish trips, but that there was no detailed discussion on the specifics of which vessels were involved, when bias occurred, where bias occurred, or the magnitude of the bias. Further, they commented that not all vessels alter fishing practices on observed trips and, therefore, should not pay a price for the behavior of others. They concluded that further discussion of the magnitude of the problem would have resulted in the development of a more robust, efficient, and cost effective monitoring program.

*Response:* We agree it is possible that the increased monitoring coverage in Amendment 23 may change the fishery, but disagree that the development of Amendment 23 lacked thorough discussion of the issues around bias. The Council chose a fixed ASM coverage target of up to 100 percent to address bias by establishing a baseline of accurate and precise catch information for the fishery because the current biased catch data makes it impossible, at this time, to calculate an ASM coverage target less than 100 percent that would eliminate or minimize bias sufficiently to ensure catch accountability. Increased ASM coverage targets, up to 100 percent, would increase the accuracy of catch estimates and reduce the potential for bias more than any other coverage target considered. Setting the coverage target up to 100 percent also simplifies compliance and enforceability of the monitoring program by removing a complex system of stratified random sampling. Higher ASM coverage, even for a limited time, along with

data from EM, could improve the cost-effectiveness of the monitoring system by providing a baseline of accurate and precise catch information to be used in the evaluation of the program that is planned.

*Comment 21:* NEFS V and XI commented that an ASM coverage target of 100 percent would result in a significant portion of fishermen leaving the groundfish fishery to retire or focus on other fisheries. They clarified that the exodus would not be because monitoring would require behavioral changes affecting fishing activity, but because industry members feel the monitoring is a burden imposed because of the activities of a small number of dishonest fishermen.

*Response:* We disagree with the assertion that Amendment 23 is focused on the activities of dishonest fishermen. In January 2016, the Council first tasked its Groundfish PDT to evaluate the current ASM program against the goals and objectives for the program as clarified in Framework Adjustment 55. In November 2016, the Council initiated Amendment 23. The Council engaged in a rigorous scoping process, including consideration of all comments before determining the purpose and need of the action. The purpose and need are focused on reliable and accurate catch accounting to support the conservation and management requirements of the FMP. Analyses conducted for Amendment 23 determined that observer bias is a problem in the sector monitoring program. One objective of the program is to achieve a coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability, but the monitoring program and Amendment 23 are not enforcement tools. Vessels that find the groundfish sector monitoring program burdensome may opt to fish as part of the common pool in which case they are not required to participate in, or pay for, the groundfish sector monitoring program. Amendment 23 also approves two types of EM as alternatives to provide flexibility for sectors to determine the monitoring tools that best fit their operations.

## *Comments on EM*

*Comment 22:* Three members of the public, one industry member, CCCFA, EDF, CLF, and Oceana commented in general support of EM. CLF noted that making EM available in addition to ASM can reduce costs and also submitted a comment on behalf of 1,251 members who had individually signed nearly identical comment letters that supported EM. One member of the public argued that EM is a cost-effective alternate to human ASM and may be of particular value to larger vessels.

*Response:* We agree EM should be approved. We previously implemented the audit model of EM, and through this final rule, we are implementing the MREM model for the reasons given in the proposed rule.

Amendment 23 provides an additional EM choice that sector monitoring plans may include so that individual vessels may choose whether to use human at-sea monitors, the audit model, or MREM for a fishing year. EM allows flexibility for those individual vessels to determine which monitoring tool is the best option to ensure catch accountability based on economics, individual fishing operations, and personal preference. Amendment 23 does not require any business to adopt EM, however.

Amendment 23 does not remove the requirement for sectors to develop and implement an ASM or EM program that is satisfactory to, and approved by, NMFS for monitoring catch and discards and utilization of sector ACE. It is conceivable that a future monitoring program review may find that EM is necessary in some circumstances to ensure catch accountability. The Amendment 23 approval of MREM as an option does not prevent a future Council from requiring EM as necessary to address such a finding. Amendment 23 also does not prevent the Regional Administrator from approving EM as a requirement if found necessary to ensure that sector monitoring programs are satisfactory for monitoring catch, discards, and utilization of sector ACE. On April 2,

2021, we announced our policy for EM cost reimbursement that includes purchase and installation of EM equipment in addition to video review and technical support costs.

*Comment 23:* One individual commented that we should not approve EM as an option to use in lieu of human at-sea monitors unless adequate research has determined the efficacy of EM. This individual also commented that while EM is offered as a cost-effective replacement for human at-sea monitors, EM could eliminate jobs and may be expensive to maintain and repair over time. A group of law students commented in opposition to Amendment 23 based on a misunderstanding that EM would be required of all vessels, asserted that the costs were too great for industry to bear, particularly small businesses, and argued we should implement EM only when Federal funding is available to defray industry costs.

*Response:* We have worked collaboratively with industry members and other partners since 2010 to develop the audit and MREM models. The analyses included in the EIS document the estimated costs of EM, including installation, operation, maintenance, and periodic replacement. Further, the economic analyses compare the costs of EM and human at-sea monitors across the fishery as a whole and at a vessel level. The blended approach to monitoring allows individual fishing businesses to choose whether to use human at-sea monitors, the audit model, or MREM. EM allows flexibility for those businesses to determine which monitoring tool is the best option to ensure catch accountability based on economics, individual fishing operations, and personal preference. EM costs are highest in the first year, due to the need to purchase and install equipment, and decline in following years. However, Federal funds are available now to reimburse the full costs of purchasing and installing EM equipment, in addition to ongoing operational costs for EM and human ASM. These funds are limited, however, and we cannot guarantee their availability in the future.

*Comment 24:* NSC commented that EM is not a viable option for commercial operations. Specifically, NSC claimed that the costs of catch foregone to allow storage of unmarketable fish on MREM vessels were not considered in the EIS; the analyses failed to consider the various components and costs associated with DSM; the complete costs of EM are not known, may escalate over time, and may not be cheaper than human at-sea monitors; and that EM data will not make a meaningful contribution to improving estimates of stock abundance.

*Response:* We disagree. We previously approved the audit EM model for use by sectors for fishing year 2021 and this action approves MREM for use by sectors. Analyses in the EIS include total costs of each of the EM and ASM options, including the scenario where EM equipment and installation costs are subsidized, as they are now with funds appropriated by Congress. Monitoring costs by homeport, engagement level, vessel size, and sector were estimated and included in the EIS.

The cost analyses do not explicitly estimate the cost of potential catch foregone by an MREM vessel to accommodate the requirement to land all allocated groundfish, including unmarketable fish. To date, vessels participating in the MREM program have not identified this issue as affecting their fishing operations, or choice to use MREM. This may be at least in part because MREM vessels have landed only small amounts of unmarketable fish. Individual vessel fishing practices and physical configurations can differ substantially, along with actual costs and opportunity costs. Each fishing business would need to determine whether potential foregone catch would make the MREM program too costly in relation to ASM or the EM audit model.

Cost estimates for MREM in the final EIS include DSM costs. These estimates use information developed in the detailed analysis of the alternatives for a mandatory dockside monitoring program for the fishery (sectors and common pool). The Council chose not to implement a mandatory DSM program for the entire fishery, but the

economic estimates remain informative and were used in estimating overall costs for MREM.

Counter to NSC's assertion that EM costs may escalate over time, we anticipate that EM costs are likely to decline over time for multiple reasons. First, costs of technology, including hardware, transmission costs, and data storage costs, have continuously declined over time. Second, review rates for EM vessel trips are not static and could be reduced or increased in response to an individual vessel's performance with EM.

*Comment 25:* In its comment, the Council requested an update on the requirement for MREM vessels to discard any red hake in excess of the possession limit, the inability of current EM systems to distinguish red hake from white hake using cameras, and how this issue is being addressed under the MREM exempted fishing permit (EFP). CCCFA commented that the Council should consider this issue as part of its review of Amendment 23 and suggested that the approach used in the audit model could be used in the interim.

*Response:* A percentage of MREM trips taken under the EFP carry at-sea monitors to estimate discards of non-allocated groundfish stocks. Data from those trips are used to create discard ratios in order to calculate discards for non-allocated stocks that are applied to MREM trips without at-sea monitors. Under the EFP, participating MREM vessels are required to retain all red hake. After further reviewing this practice and available data, we have developed a different approach that is implemented by this rule for the operational MREM program. MREM vessels will be required to comply with the red hake trip limits, meaning they will be required to discard red hake over the applicable possession limit. A portion of MREM trips will carry a NEFOP observer. Discards of non-allocated stocks (including red hake) from MREM trips that carry an observer will be calculated based on the observer data. Discards of non-allocated stocks on MREM



trips, and discards of unallocated stocks on trips where the EM system fails or footage is not usable, will be calculated, by stratum, based on MREM and other trips that carry an observer.

Allocated stocks are assigned a discard rate of zero on unmonitored trips, including white hake (for which there is no minimum size). Thus, sector vessels are required to land all white hake, and discards of hake on MREM trips will not be counted as white hake. Rather, we will presume all discarded hake are not white hake, unless there is sufficient information (*e.g.*, observer data, clear video of discarded hake larger than red hake and spotted hake) to suggest otherwise, and that all discarded hake are red hake or spotted hake. We intend to collect data on hake discards in the first year(s) of the operational MREM program, including comparing catch of hake on NEFOP observed trips to MREM trips, to better understand the volume and nature of discards and will share that information with the Council for use in its review of Amendment 23.

*Comment 26:* Teem Fish and CCCFA commented that discards of allocated groundfish that occur on MREM trips should be considered operational discards, and recorded as such during EM review, when they fall within the example situations noted in the proposed rule (fish that drop out of the gear into the ocean, fish taken by birds) because these are extenuating circumstances that are mostly outside the control of the vessel.

*Response:* Some discards of allocated groundfish may at times occur on any observed or monitored trips. NEFOP, ASM, MREM, and audit EM trips may include operational discards (fish that drop out of the gear into the ocean, fish taken by birds), accidental discards, or intentional discards. These discards cannot always be estimated using current EM technology. We agree that operational discards should be annotated during review of EM footage, should not count against sector allocations, and should not trigger enforcement action. The EM reviewer guidance will be updated to treat MREM

and audit model trips the same. However, the Council should consider how to account for all discards on EM trips in the overall management of the fishery.

*Comment 27:* CCCFA and Teem Fish commented that we should revise the requirement for a vessel owner or operator to “make the electronic monitoring system, associated equipment, electronic monitoring data, or vessel monitoring plan available to NMFS for inspection, upon request,” to state explicitly that the service provider of the EM system should be included in NMFS’ request and allowed to be present for the requested inspection.

*Response:* We disagree and have approved the regulatory requirement as proposed. This is an existing regulatory requirement that was previously codified at 50 CFR 648.87(b)(5)(iii)(A)(3)(v) and is only moved by this rule to § 648.11(l)(10)(i)(B)(5) as part of a reorganization of the regulations, but was not proposed to be changed. This requirement applies to all EM vessels at all times, including when boarded at sea. Requiring inclusion of EM service providers in the request for the opportunity to be present could hamper real-time enforcement and present problems for documenting the chain of custody if the EM system, equipment, data, and vessel monitoring plan were not immediately turned over upon request. The regulatory requirement does not prevent a vessel from requesting their EM service provider’s assistance.

*Comment 28:* CCCFA and Teem Fish requested that we clarify the specific facilitation requirement proposed as part of the implementing regulations at § 648.11(l)(5)(vii)(P)(I). Specifically, each asked about the roles of EM providers and NMFS, and whether we intend for the role of troubleshooting and system issue resolution to be handed over to NMFS.

*Response:* The implementing regulations at § 648.11(l)(5)(vii)(P)(I) require monitoring service providers to facilitate fully functioning EM systems by providing to NMFS, upon request, “Assistance in electronic monitoring system operations,

diagnosing/resolving technical issues, and recovering lost or corrupted data.” The intent of this requirement is administrative. EM service providers are best positioned to provide NMFS with information or guidance for resolving technical issues relating to NMFS’ access to and use of the EM providers’ systems or systems’ data. At this time, there is no intention for NMFS to take on the role of troubleshooting or resolving an EM provider’s or vessel’s EM system issues. A workable EM system is essential to an effective EM program. An EM service provider must be able to provide for the successful provision of data on a vessel’s behalf to help ensure the vessel is able to comply with EM requirements and provide NMFS with all required information.

*Comment 29:* CCCFA and Teem Fish requested that we define “electronic monitoring data” to clarify the data retention requirements and download requirements so that all parties would be aware of the exact attributes, relative amount of data that must be retained, and what must be provided to NMFS upon request.

*Response:* The term “electronic monitoring data” is defined in § 648.2 as “the data that are created in the collection of fishery-dependent data by electronic monitoring systems during fishing operations, including the video, images, and other sensor data, as well as the metadata that provides information (*e.g.*, trip sail date, vessel information) about the raw data.” The metadata do not include the data sets that are delivered to the software application using the application programming interface (API). An EM provider may choose to keep a copy of any submitted reports for their own records, but this is not a vessel requirement.

*Comment 30:* CCCFA and Teem Fish highlighted that the preamble discussion of the audit model incorrectly stated that “The EM data are compared to verify the eVTR-reported catch and discards.” Each noted that the audit program uses EM to verify only discards and not kept catch.

*Response:* We agree. The preamble discussion is incorrect. The definition of electronic monitoring audit model at § 648.2 correctly states that “...electronic monitoring data are compared to the area fished, regulated species and ocean pout discards, and other information reported on the vessel trip report on a subset of trips for validation.” The audit model is designed to verify discards, not catch.

*Comment 31:* Teem Fish and CCCFA commented that we should revise the proposed requirement for a pre-trip EM system check because captains should not be expected to know the exact amount of data needed for their fishing trip and should conduct checks only to ensure system functionality and recording availability.

*Response:* We agree that it may be difficult for a vessel owner or operator to estimate the amount of data storage necessary for each trip. In this final rule we have revised the proposed implementing regulation text at § 648.11(1)(10)(i)(A)(2) to remove the requirement for a vessel owner or operator using EM to determine that there is sufficient video storage capacity to retain the recording of the entire fishing trip. We will monitor this issue and may propose changes in future if it is determined this issue undermines the effectiveness of the EM program. It remains the responsibility of vessel owners and operators to ensure that the EM system is operational, recording, and retaining the recording for the entire trip. Because a failure to comply with the requirement to record and retain data for entire EM trips may result in an enforcement action, vessel operators or owners conducting system checks and actively managing EM systems to ensure proper operation for an entire trip should be part of a vessel’s regular operations notwithstanding our revision.

*Comment 32:* The Gulf of Maine Research Institute (GMRI) urged us to develop VMP guidance that allows for minor modifications without requiring the resubmission and approval of VMPs through NMFS. GMRI noted that it has found that instituting small changes to improve performance, such as slight adjustments to camera angles or

discard points, can be cumbersome (implying that such changes should be able to be more easily incorporated into VMPs without in depth NMFS review and approval).

GMRI suggested that allowing minor modifications to VMPs through NMFS' Vessel Management Application (VMAN) would lead to greater efficiencies and save time for industry, NMFS, and service providers.

*Response:* In this final rule we have revised the regulatory text at § 648.11(l)(10)(i)(B). The new text requires that “Vessels must submit vessel monitoring plans and revisions to vessel monitoring plans for NMFS review and approval, as instructed by the Regional Administrator.” This language requires submitting substantial VMP changes for review and approval, but allows the Regional Administrator to identify in our written VMP guidance the scope of changes that would require resubmission and approval of the VMP.

*Comment 33:* The Council supported the proposal to require EM vessels to have their EM turned on for 100-percent of trips, including trips west of 71° 30' W. Longitude. The Council highlighted that the EIS identified that the proposed EM options minimize the potential for bias in the catch estimates because EM operates on 100 percent of trips and that proposed monitoring tools are intended to meet or exceed the selected monitoring coverage target. NEFS V commented that trips that would be excluded from the human ASM requirement should also be excluded from EM.

*Response:* We agree that vessels using EM should follow their VMP on all trips and have approved the measure as proposed for the reasons explained in the proposed rule. Throughout the development of EM, we have found that vessels are most successful at complying with their VMP when it is followed on all groundfish trips. Vessels that are interested in fishing in ways that would be excluded from ASM may choose to use ASM, rather than adopting EM, and be excluded from the sector monitoring requirement on trips excluded from the human ASM requirement.

*Comment 34:* CCCFA and GMRI opposed the requirement for monitoring service providers to submit EM reports within 10 business days of a trip being selected for video review, as proposed at § 648.11(l)(10)(ii)(B). GMRI explained that it is challenging and expensive for EM providers to file a report on a multi-day trip within 10 days. GMRI requested that the deadline for filing electronic monitoring reports be removed from the rule and handled in the electronic monitoring reviewer guidance. CCCFA stated that the 10-day window makes sense for the audit model, but might not make sense for MREM, where trips may be longer than seven days. CCCFA noted that additional flexibility in the timing of EM report submission should be acceptable because the data in the EM report for MREM vessels is not used by sector managers for catch accounting. CCCFA concluded that review deadlines should be tied to the amount of video being reviewed.

*Response:* We agree that a 10-day window for submitting EM reports for MREM trips may not be necessary or practical, for the reasons stated by GMRI and CCCFA. However, setting a deadline is necessary for the efficient operation of the program. The proposed regulatory text stated that EM reports must be submitted to NMFS within 10 business days of a trip being selected for video review “or as otherwise instructed by the Regional Administrator.” This allows flexibility for us to change the timing requirement through the EM reviewer guidance document. We will continue to work with sectors and monitoring service providers to develop an appropriate window. Accordingly, we have approved the regulatory requirement as proposed.

*Comment 35:* GMRI opposed the portion of the proposed implementing regulations at § 648.11(l)(10)(iv), requiring dealers to facilitate DSM, that states dealers must make all fish from MREM vessels available to dockside monitors for “the collection of age structures such as otoliths or scales.” GMRI argued that these age structures could be collected by NEFOP observers deployed on MREM vessels or by the NMFS portside biosampling program. GMRI suggested that making this a requirement of dockside

monitors would greatly increase the costs of the program and require that dockside monitors have additional training and qualifications that are not needed to meet the underlying catch accounting goal of the program.

*Response:* We disagree and have approved the regulatory requirements at § 648.11(l)(10)(iv) as proposed. While it is possible that some age structures could be obtained through the portside biosampling program, the current program is not designed to handle the volume or the needs of MREM trips. To prevent duplication of effort, the portside biosampling program will exclude landings from MREM trips. However, we intend to continue operating the NMFS-based DSM program during fishing years 2022 and 2023, and will be working with GMRI to run a pilot study to develop requirements for a third-party industry-funded DSM program to replace the NMFS-operated DSM program. We intend to test alternative protocols to develop efficiencies and potential cost-savings during the pilot program. Amendment 23 and its implementing regulations include a process for NMFS to revise the at-sea and electronic monitoring operations standards, if we identify improvements to the regulations implemented by this final rule.

*Comment 36:* GMRI opposed the proposed implementing regulation that would require Federally permitted Northeast multispecies dealers to first offload from MREM vessels all fish below the minimum size specified at § 648.83 before other fish that meet the minimum size. GMRI noted that offloading the undersized fish last could be more cost effective by allowing for a single DSM to witness an offload rather than the multiple monitors that are frequently deployed under the current program. GMRI suggested that operational details be specified in dockside monitoring guidance developed during the pilot project.

*Response:* We agree and have revised the regulation at § 648.11(l)(10)(iv)(B)(I) to remove the requirement for dealers to offload fish below the minimum size before other fish. Our intent is to allow MREM vessels and dealers to determine the most

efficient way to offload MREM trips. This will also facilitate having a third party DSM program in the future where DSM providers may negotiate the offload process with sectors.

*Comment 37:* GMRI supported the proposed measure for dealers offloading MREM vessels, at § 648.11(l)(10)(iv)(B)(2), to allow redfish, haddock, and pollock below the minimum size specified at § 648.83 to be mixed with the same species of fish in the smallest market category. GMRI also requested the provision be expanded to all allocated groundfish species landed by MREM vessels. GMRI also suggested the proposed regulatory text be further modified to state, “fish treated in this manner must be available for a monitor to sample.” rather than the proposed language stating, “provide the dockside monitor access to those at the safe sampling station.”

*Response:* We disagree. This final rule revises the regulation at § 648.11(l)(10)(iv)(B)(2) to require dealers to separate, by species, all fish below the minimum size specified at § 648.83. This change removes the option for a dealer to report a mix of fish below the minimum size specified at § 648.83 along with fish of the smallest market size meeting the minimum size. This change requires dealers to separately report all fish below the minimum size, by species. Under the current EFP, reporting a mix of fish below the minimum size and the smallest market category has been permitted, but dealers have stopped using the mixed category in reporting because there was an economic benefit to separating fish below the minimum size from larger fish. Further, continued work to implement Amendment 23 has determined that the catch accounting process required to implement the MREM program requires reporting fish below the minimum size separately from other categories of fish of the same species to facilitate the inclusion of MREM trips in the SBRM program. MREM vessels will not be a unique fleet in SBRM, and therefore NMFS must be able to delineate the catch of fish below the minimum size on MREM trips to incorporate those trips into the existing



SBRM fleets. As discussed above, the implementing regulations include a process for NMFS to revise the at-sea and electronic monitoring operations standards, if we identify improvements to the regulations implemented by this final rule.

*Comment 38:* CCCFA and one fisherman commented that a formal process is necessary to compare DSM data, ASM data, and EM data to vessel trip report (VTR) data and dealer data to accurately account for catch. The fisherman suggested that the audit EM model should be updated to include a broad estimate or characterization of the catch by the EM video reviewer.

*Response:* We agree with the importance of eliminating or minimizing to the extent possible the potential for misreporting. Existing data protocols will continue, and we plan to implement an automated comparison of DSM data and dealer data as part of the MREM program to meet the Council's intent for MREM to ensure compliance with the requirement to land all allocated groundfish and verify dealer-reported catch.

We disagree that the proposed regulations for the audit model must be changed to sufficiently address that potential. We will continue to evaluate EM operations to look for opportunities to ensure full and accurate reporting. The goal of Amendment 23 is to improve catch accounting with two objectives: 1. Determine total catch and effort for each sector and the common pool; and 2. Achieve a coverage level sufficient to minimize bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability. While it is likely that increased monitoring will lead to increased compliance with at-sea reporting requirements, in addition to increasing the accuracy and precision of catch information, Amendment 23 is not revising the sector monitoring program as a whole to be an enforcement tool. NOAA's Office of Law Enforcement will continue to enforce all regulations and investigate potential violations.

*Comment 39:* The Council commented that it is unclear what we intended to address with the proposed requirements for dealers to clearly mark all containers

containing sublegal catch to facilitate tracking and to provide settlement documents to the DSM program for any allocated groundfish forwarded to secondary dealers. The Council asked how far down the supply chain the requirement would apply, and asked us to define ‘secondary dealers.’

*Response:* This final rule implements the MREM model. Vessels participating in MREM are required to land all fish from allocated groundfish stocks, including fish below the minimum sizes specified in the regulations at § 648.83. As part of implementing Amendment 23, the regulations authorize only Federally permitted Northeast dealers to purchase, possess, and/or receive undersized fish that are landed by MREM vessels. Non-MREM vessels are prohibited from landing fish below the minimum sizes. We proposed the requirement for federally permitted dealers to identify, mark, or label all containers containing fish below the minimum size to provide a means for federally permitted dealers who purchase fish from MREM vessels to demonstrate compliance with the minimum size requirements by ensuring all small fish can be traced to the landing MREM vessel.

The definition of dealer at § 648.2 refers to the person who receives fish, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel. Any federally permitted dealer may only possess undersized fish from federally permitted vessels if the fish is from an MREM vessel. The reference to “secondary dealers” was a shorthand reference to any Northeast multispecies federally permitted dealer that receives Northeast multispecies from another federally permitted dealer, rather than directly from a vessel. For example, if dealer A offloads and purchases catch from an MREM vessel, sorts and keeps the haddock, pollock, and redfish for sale to retailers or the public, but sells all other groundfish species to dealer B, then dealer B is a secondary purchaser of the fish landed and purchased by dealer A from the MREM vessel. To show that the fish purchased from dealer A is legally possessed, federally

permitted dealer B must have any container with fish below the minimum size labeled or tagged as described in the regulations. This container identification allows federally permitted dealers to demonstrate compliance and to legally possess undersized fish that were originally landed by MREM vessels and sold to a federally permitted dealer. Only entities issued a Federal dealer permit are subject to the requirement to identify containers with small fish. Other entities without a Federal dealer permit for Northeast multispecies who purchase from a federally permitted dealer rather than purchasing or receiving from MREM vessels, such as wholesalers and retailers, are not subject to the labeling requirement. In this final rule, we have revised the proposed regulatory text to clarify these issues. The permit holder bulletin for Amendment 23 contains guidance for dealers.

*Comment 40:* The Northeast Sector Services Network (NESSN) commented that the EM implementation issues we highlighted in the proposed rule for comment were known during the development of Amendment 23. NESSN questioned why these items, along with other comments and questions raised during the draft EIS public comment period, were ignored by the Council.

*Response:* We disagree that the Council failed to properly address comments on the draft EIS or that the Council ignored implementation issues. The process for Amendment 23 was consistent with the policies, procedures, and applicable laws that apply to developing actions. The Council discussed comments on the draft EIS at its September 2020 meeting. Many changes and additions were made to the final EIS to improve the draft EIS, as discussed in the responses to other comments. The Council considered a number of different alternatives prior to selecting the preferred alternatives. The Council's Groundfish PDT developed, and analyzed in the EIS, the alternatives selected by the Council for inclusion in Amendment 23. Implementation questions sometimes arise subsequent to selecting preferred alternatives. NMFS is responsible for

implementing all approved measures, including developing systems and processes consistent with existing and future systems. Final implementation work by NMFS sometimes uncovers unforeseen administrative issues.

In the proposed rule, we highlighted implementation issues for comment by the Council and the public prior to finalizing the implementing regulations. NMFS approved Amendment 23 in full, and this final rule contains the necessary implementing regulations. As discussed in this preamble, the changes from the proposed rule improve implementation and are consistent with NMFS' responsibility to carry out fishery management plan amendments. The implementation issues highlighted in the proposed rule are worth monitoring and evaluating, consistent with the Council's intent to evaluate the groundfish sector monitoring program changes in Amendment 23 through a future action.

*Comment 41:* In its comments, CCCFA asked whether the proposed requirement for monitoring service providers to have an availability report available and accessible to NMFS electronically 24 hours a day, 7 days a week, applies to electronic monitoring review.

*Response:* The proposed implementing regulation at § 648.11(h)(5)(vii)(E) states "The monitoring service provider must report to NMFS any inability to respond to an industry request for observer or monitor coverage due to the lack of available observers or monitors as soon as practicable. Availability report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week." This is an existing requirement and the intent is for ASM providers to have an availability report that is accessible to NMFS. This requirement does not apply to the availability of EM reviewers because EM reviewer availability is not dependent on the timing of the fishing trip.

*Comments on Determining Monitoring Coverage at a Time Certain*

*Comment 42:* NESSN, NEFS V, and NEFS XI supported having the ASM coverage target announced at a time certain before the annual sector enrollment deadline. NESSN requested that, in years when Federal funding information was not available to set the ASM coverage target ahead of the enrollment deadline, NMFS provide estimated industry costs prior to the sector enrollment deadline. NEFS V and NEFS XI commented that NMFS should always prioritize and complete the funding-based determination of the ASM coverage target before the sector enrollment deadline.

*Response:* We agree the ASM coverage target should be announced at a time certain before the annual sector enrollment deadline. As stated previously, NMFS will announce the ASM coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS. NMFS will use all Federal funding information available at the time it makes its determination, including any remaining funding from previous appropriations, to determine the ASM coverage target for the following fishing year. For example, if Congress has not approved a final budget for the fiscal year when NMFS makes its determination of the coverage target for the next fishing year, NMFS will use the Federal funding status at that time to set the target coverage level for the upcoming year. NMFS will adjust the coverage level as necessary and appropriate based on final Federal funding and appropriations to NMFS. If Federal funding for ASM and EM coverage is insufficient to pay for industry costs, the ASM coverage target will be 40 percent of all sector groundfish trips.

*Comment 43:* CLF commented that the EM video review rate should be 100 percent during the first year to account for the vessel learning curve for EM. NEFS V and NEFS XII commented that the EM video review rate should start at 50 percent and reflect the captain's ability to estimate discards accurately. EDF commented that human review of EM video could be one of the most significant costs of an EM program. EDF highlighted that an EM video review rate of 10 – 20 percent is common in EM programs

to balance costs and accuracy goals. Further, EDF raised concerns about our secondary review of EM video and suggested we implement the lowest secondary EM video review rate necessary to adequately audit monitoring service providers.

*Response:* On June 14, 2022, we notified the Council that the fishing year 2022 video review rate for the audit model electronic monitoring program is 35 percent of trips for experienced vessels and 50 percent of trips for newer vessels. Experienced vessels are defined as those that participated in the EM program while it operated under an exempted fishing permit and took a minimum of one sector trip in the operational audit model program in fishing year 2021. Experienced vessels typically have multiple years of experience with EM and the associated catch handling and reporting requirements. Vessels that are newer to the audit model will remain at the 50-percent video review rate to allow more opportunities for feedback on their catch handling and reporting performance. The fishing year 2022 video review rate for MREM vessels is 50 percent of trips, as announced in the Draft Fishing Year 2022 Sector Operations Plan, Contract, and Environmental Assessment Requirements.

Our video review rate determination is based on an analysis of past performance to provide a reasonable expectation of achieving a CV of 30 percent, or better, precision level for each groundfish species. Using a CV analysis for determining video review rates is suitable because a vessel is uncertain of which trips are reviewed, and thus there is not the same bias as experienced with ASM. Based on the results of the analysis, the minimum review rate required to achieve a 30-percent CV for all groundfish species in fishing year 2020 was 35 percent of sector trips. While we used a 30-percent CV standard to select video review rates for fishing year 2022, we are not required to use this standard and may employ a different approach in future fishing years based on data collected and evaluated under an operational program. We will continue to explore metrics for

evaluating and categorizing vessel performance to inform video review rates in future fishing years.

*Comments on the Review Process for Monitoring Coverage Targets*

*Comment 44:* CLF, CCCFA, EDF, Oceana, TNC, NEFS V, and NEFS XI supported the review process for monitoring coverage targets. CCCFA commented that regular Council review is necessary to refine ASM coverage targets, determining uncertainty buffers, and address issues raised in the proposed rule. Oceana urged that the review take place once two full years of data are available, regardless of the coverage targets.

*Response:* We agree and have approved the measure as proposed for the reasons explained in the proposed rule.

*Comment 45:* CCCFA commented that NMFS and the Council should monitor realized coverage and waivers in the first year to refine the program for the second year.

*Response:* We monitor achieved coverage and waivers in real time, and meet with monitoring providers monthly to improve the likelihood of achieving monitoring coverage targets.

*Comment 46:* CLF and Oceana commented that Amendment 23 should specify the terms of reference for the review. CCCFA supported leaving the review metrics out of Amendment 23, but suggested several metrics that should be used, including the number of waivers issued, overall industry and NMFS costs, and changes in groundfish fleet composition. NEFS V suggested the review compare and contrast the groundfish discard estimates generated by all components of the approved monitoring program (NEFOP, ASM, audit EM, and MREM), and include an analysis of costs per trip or sea day between ASM, audit EM, and MREM.

*Response:* We disagree that the review metrics should be specified in Amendment 23 or the implementing regulations. The Groundfish Committee and PDT are currently developing the review metrics through the Council's inclusive public process.

*Comments on Waivers from Monitoring Requirements*

*Comment 47:* NEFS V and NEFS XI supported granting waivers when funding is not available for NMFS' costs. CCCFA commented in support of waivers for logistical challenges, but raised concern that too many waivers would undermine the goal of the monitoring program, suggested EM as an alternative to issuing waivers from ASM, and urged that NMFS track waivers in real time to prevent abuse of waivers to avoid monitoring. One fisherman commented in support of waivers, but suggested waivers be phased out after the first year. One law student stated that waivers should not be issued to EM vessels on the basis of cost.

*Response:* We agree that monitoring waivers should be considered for vessels if NMFS is unable to fund some of its own costs associated with the sector monitoring program. If NMFS cannot pay for any of its costs to administer the groundfish sector monitoring program, the program cannot operate. In this unlikely situation, we would waive all sector trips from the requirements for ASM, EM, and DSM until such time as we had funding to administer the groundfish sector monitoring program. If NMFS waives monitoring requirements due to insufficient funding, as part of the review of the changes to the monitoring program, the Council and NMFS will consider whether changes to the FMP are necessary to ensure effective management if the ASM coverage target is less than 40 percent. We have approved the measure as proposed for the reasons explained in the proposed rule. Monitoring is always dependent on the availability of Federal funds, because even under industry-funded monitoring programs, NMFS incurs costs associated with administering monitoring programs. Therefore, we disagree that waivers should be phased out after the first year.



NMFS may also issue waivers from the human ASM and EM requirements for other reasons. These can be administrative waivers, safety waivers, and logistical waivers. For example, we may waive the requirement to carry an observer or monitor if the facilities on a vessel for housing the observer or monitor, or for carrying out observer or monitor functions, are so inadequate or unsafe that the health or safety of the observer or monitor, or the safe operation of the vessel, would be jeopardized. We have a policy where we may waive the human ASM requirement for a trip if the observer or monitor fails to arrive at the vessel at the confirmed sail time. We also may issue waivers from the ASM requirement for logistical reasons, such as a lack of available human at-sea monitors or from the EM requirement in limited circumstances related to equipment issues. If observer requirements are waived, NMFS monitors fishing effort and catch data, and other relevant information, to ensure that there are no significant adverse environmental consequences and consider alternative fishery management measures should such consequences arise.

*Comments on Exclusion from Monitoring Requirements for Certain Vessels Under Certain Conditions*

*Comment 48:* CLF and Oceana opposed removing human ASM coverage for trips occurring exclusively west of 71° 30' W. Longitude. The commenters argued that accurate and precise catch information is not available to justify the exemption.

*Response:* We disagree and have approved the measure as proposed for the reasons explained in the proposed rule. The Council included this provision to minimize the costs of the overall increase in monitoring because the majority of groundfish are caught in waters east of this boundary. This measure may create some degree of uncertainty in discard estimates for the affected stocks, as discussed in the biological effects section of the EIS, but the effect is expected to be small given the low percentage of catch from this area. If negative effects are found during the Council's review, this

exclusion from monitoring could be adjusted in a future action. The Council will consider uncertainty from this measure when evaluating the need for a management uncertainty buffer for sector sub-ACLs as part of each specification action. Amendment 23 includes a review for vessels excluded from the ASM requirement that provides a formal process to evaluate the effects of excluding some trips from ASM and could support future action to address issues, if necessary.

*Comment 49:* The Council commented that the proposed measure to remove human ASM coverage for trips fishing exclusively west of 71° 30' W. Longitude includes a VMS declaration requirement and suggested that the declaration of these trips should make it possible to create discard strata for these trips, similar to discard strata for different gear types. The Council noted this would complicate the process for estimating discards, but suggested its consideration for addressing discard estimation in the area. The Council also noted that Amendment 23 includes a review process for the measures that remove monitoring coverage for a portion of the fleet that is intended to verify whether the intent of the measures (*e.g.*, that the catch composition has little to no groundfish) is being met, and that should the review indicate otherwise, the Council could consider addressing this in a future action.

*Response:* We are not creating a new VMS declaration to identify trips excluded from the ASM requirement, consistent with the Regional Administrator's authority to streamline sector reporting. Creating VMS declarations specific to sector trips excluded from the ASM requirement would not provide advance notice to us for the selection or waiving of trips and would significantly complicate the VMS system by substantially increasing the number of potential VMS codes. Sector vessels are required to use the PTNS to notify NMFS at least 48 hours in advance of all groundfish trips. We use the PTNS to select trips for NEFOP observer coverage as well as ASM coverage. When notifying us of a trip in the PTNS, users will be asked whether the trip will fish

exclusively west of 71° 30' W. Longitude. We will use the PTNS notification to determine trips that are excluded from the sector human ASM requirement for the purpose of assigning at-sea monitors. Data from the PTNS is available to other systems for efficient collection, storage, and transmission; and may be used to identify ASM-excluded sector trips in our systems. In addition, we will require sector vessels on trips excluded from the ASM requirement to submit a trip-start hail (TSH) through their VMS to confirm the trip will fish in compliance with the ASM waiver granted. Some statistical areas are entirely west of 71° 30' W. Longitude (*e.g.*, 611, 613), and we can use VTRs to stratify these. Other statistical areas (*e.g.*, 533, 537, 539) are bisected by 71° 30' W. Longitude, which prevents us from using the VTR for stratification and catch accounting. Therefore, a TSH is necessary for NMFS to stratify the trip and assign discards for catch accounting. It also provides the added benefit of reaffirming the operator's PTNS notification to ensure they are fishing in the manner for which they notified.

The TSH, in combination with the VTR, will allow identification of trips excluded from the ASM requirement to support stratification of these trips. Developing discard rates for these new strata will be challenging because there will be limited NEFOP coverage of ASM-excluded trips to form the basis of the discard rates. Stratification is necessary for the affected stocks to prevent catch on monitored trips from overwhelming catch from unmonitored trips. We agree that the review will provide a formal process to evaluate the effects of excluding some trips from ASM and could support future action to address issues, if necessary. As discussed in the biological effects section of the EIS, this will create additional uncertainty in discard estimates for the affected stocks that will be considered when evaluating the need for a management uncertainty buffer for sector sub-ACLs as part of each specification action.

*Comment 50:* NEFS 5 recommended simplifying this exemption by including the whole of statistical areas 533 and 539 to make it easier for vessels to notify NMFS of

their intent of where they expect to fish with respect to this exemption and to facilitate the monitoring of compliance with is exemption by sector vessels.

*Response:* We disagree and have approved the measure as proposed for the reasons explained in the proposed rule. NMFS may only approve, partially approve, or disapprove Amendment 23. The ability to partially disapprove Amendment 23 is limited and does not allow us to approve only pieces of individual alternatives or to select an alternative not selected by the Council. Thus, we cannot expand this exemption to the whole of statistical areas 533 and 539 nor limit the geographic area of this exemption to align with stock areas.

*Comments on Review Process for Vessels Excluded from Commercial Groundfish Monitoring Program Requirements*

*Comment 51:* CLF commented in support of reviewing all exclusions from that ASM requirement for sector groundfish trips.

*Response:* We agree and have approved this provision for the reasons given in the proposed rule.

*Comments on Increased Monitoring Coverage if Federal Funds are Available*

*Comment 52:* CCCFA supported allowing us to increase ASM coverage in year 5 and beyond, when Federal funding is available to support NMFS' and industry costs.

*Response:* We agree and have approved this provision for the reasons given in the proposed rule.

*Comments on Elimination of Management Uncertainty Buffer for Sector ACLs*

*Comment 53:* The Council commented on the issue of removing the uncertainty buffer for all stocks when the ASM coverage target is 100 percent, while trips fishing exclusively west of 71° 30' W. Longitude are excluded from the ASM requirement. The Council noted that while eliminating ASM coverage in this geographic area may increase the uncertainty about catches of these stocks, it would have a small effect on the overall

catch estimate. The Council highlighted that, for southern New England yellowtail flounder and winter flounder, southern windowpane flounder, and ocean pout, catch west of 71° 30' W. Longitude has been over 25 percent of total catch of those stocks in some recent years, but that total catch of these stocks by sector vessels was roughly half or less of the sub-ACL in fishing year 2020. The Council argued that this means that the portion of the ACL caught west of the boundary was at most 12.5 percent of the sub-ACL and pointed out that these trips are still subject to NEFOP coverage. The Council concluded that removing the uncertainty buffer is not likely to increase the risk of exceeding the ABC for these stocks, unless the catches increase significantly from recent years. The Council also noted that Amendment 23 includes a review process for the measures that remove monitoring coverage for a portion of the fleet that is intended to verify if the intent of the measures (*e.g.*, that the catch composition has little to no groundfish) is still being met, and that should the review indicate otherwise, the Council could consider addressing this in a future action. The Council reiterated that this alternative was selected to minimize the costs of increased monitoring overall, and balanced monitoring costs with limited potential impacts on total groundfish catch.

*Response:* As discussed above in responses to comments on excluding certain vessels from the ASM requirements under certain conditions, NMFS data systems will allow identification of trips excluded from the ASM requirement to support stratification of these trips, but developing discard rates for these new strata will be challenging. This will create additional uncertainty in discard estimates for the affected stocks that the Council will consider when evaluating the need for a management uncertainty buffer for sector sub-ACLs as part of each specification action.

*Comment 54:* CLF and Oceana opposed the provision allowing us to revise the management uncertainty buffer for the sector portion of the ACL for each allocated groundfish stock to be set to zero in years in which the ASM coverage target is 100

percent. CLF and Oceana argued that uncertainty would remain due to unobserved fishing and other factors. CLF also argued that increasing monitoring coverage to 100 percent only addresses three of the five elements included in the management uncertainty buffer (monitoring adequacy, precision, and enforceability), and suggested that issues raised in the proposed rule demonstrate that management uncertainty could never be reduced to zero. NEFS V and XI commented that retaining the management uncertainty buffers would allow us to focus on developing a solution to the buffer concern for vessels exempted from ASM and remove the need to address changes to sector ACE carryover. NESSN, NEFS V, and NEFS XI commented that the increased allocations resulting from removing the management uncertainty buffer would not be a meaningful increase and would not offset the significant additional costs of increased monitoring.

CLF, TNC, and two members of the public commented that we should remove the management uncertainty buffers only when the realized monitoring coverage is 100 percent, rather than when the ASM coverage target is 100 percent. Further, they requested we explain the process and criteria we would use to adjust the management uncertainty buffer if realized coverage rates are lower than the target coverage rates. CCCFA encouraged NMFS to eliminate the uncertainty buffer only once certain criteria are met, including over 90 percent of trips have an observer or working EM cameras.

*Response:* We disagree that the uncertainty buffer should only be removed when the fishery achieves 100-percent monitoring coverage because that determination cannot be made until the end of the fishing year, thus eliminating the benefit to the fishery of removing the buffers to allow additional harvest. Further information may also show a level of coverage below 100 percent that still allows for removal of the uncertainty buffer. We are actively increasing monitoring coverage to achieve high levels of coverage in fishing year 2022, and we are not removing the uncertainty buffer for fishing year 2022 because the ASM coverage target will be 80 percent of trips.

We agree that removing uncertainty from catch data is important to improving management of the fishery. However, this measure does not remove the uncertainty buffer when it is not warranted. This provision allows for the removal of the uncertainty buffer when the ASM coverage target is 100 percent and when available information indicates this is appropriate and warranted. Achieving an ASM coverage target of 100 percent will minimize bias in fishery-dependent data. As discussed in the proposed rule, the management uncertainty buffer accounts for the possibility that management measures will result in a level of catch greater than expected. The revised management uncertainty buffers would apply only to sectors, and not to the common pool component of the fishery, or other sub-ACLs or subcomponents for any stocks, which means a certain level of uncertainty buffer will continue to exist for each ACL and sub-ACL. The process by which the Council evaluates and sets management uncertainty buffers for each fishery component in specification actions remains unchanged, and the Council could adjust management uncertainty buffers in future actions. The Council is still required to review whether the removal is warranted in each action that sets specifications, which may include consideration of concerns identified by the commenters. As discussed below (see *Changes from Proposed Rule*), we have revised the proposed implementing regulations to clarify the uncertainty buffer will not default to zero if the Council specifies a different management uncertainty buffer is warranted to help ensure catch does not exceed a sector sub-annual catch limit.

We agree that the increased revenues associated with removing the uncertainty buffers will not fund industry costs of monitoring because the buffers may only be removed in years where the ASM coverage target is 100 percent. In any year that industry pays a portion of its at-sea monitoring costs, the ASM coverage target will be set at 40 percent. Therefore, in any year that industry pays a portion of its at-sea monitoring costs, the buffers will remain in place. However, combined with options to use EM, capping the

ASM coverage target at 40 percent when Federal funds do not subsidize industry costs, and incorporating SBRM observer coverage, Amendment 23 reduces the potential increase in costs to industry through a range of considerations and factors.

*Comment 55:* CCCFA suggested the Council and NMFS should reconsider the removal of the uncertainty buffer for groundfish trips occurring in statistical areas 533, 537, and 539, because these areas will have ASM coverage east of 71° 30' W. Longitude, but no ASM coverage west of the line.

*Response:* We disagree. Uncertainty buffers are not applied at the trip level, and this was not contemplated or considered in this action. As discussed above, a certain level of uncertainty buffer will continue to exist for each ACL and the process by which the Council evaluates and sets management uncertainty buffers remains unchanged. The Council is still required to review whether the removal is warranted in each action that sets specifications and the Council could adjust management uncertainty buffers in future actions, if it is deemed necessary. Further, NMFS may only approve, partially approve, or disapprove Amendment 23. The ability to partially disapprove Amendment 23 is limited and does not allow us to approve only pieces of individual alternatives or to select an alternative not selected by the Council. Thus, we could not approve the measure allowing removal of the uncertainty buffer and disapprove that measure only for trips occurring in certain areas because the Council did not choose such a measure.

#### *Comments on Sector Reporting Streamlining*

*Comment 56:* One member of the public commented that Amendment 23's process for the Regional Administrator to make changes to the sector monitoring and reporting requirements in the regulations does not comply with the requirements set forth by the APA. The commenter expressed concern that Amendment 23 would allow for the Regional Administrator to modify the sector monitoring and reporting requirements without specifying exactly how the objective of preventing overfishing would be met.



TNC, NEFS V, and NEFS XI commented in support of authority for the Regional Administrator to streamline sector reporting requirements. NEFS V and XI also noted in their comments that a sector has a reporting responsibility to its members, as well as to NMFS; highlighted that comparing NMFS data sets to sector data sets is an effective data reconciliation process; and stated that having sector managers searching for data errors blindly would not streamline the process.

*Response:* We disagree that Amendment 23 does not comply with the APA. Any future changes to the sector monitoring and reporting requirements in the regulations would be made consistent with the requirements of the APA. In the proposed rule, we solicited comment regarding using the Regional Administrator's authority to require audit model vessels to report discards at the sub-trip level, rather than the haul level. In addition, as discussed above, we are not creating a new VMS declaration to identify trips excluded from the ASM requirement, consistent with the Regional Administrator's authority.

We agree that the Regional Administrator should use the authority to revise sector monitoring and reporting requirements to streamline reporting, under section 305(d) of the Magnuson-Stevens Act, if alternative methods can be found to satisfy the requirements. As discussed in the proposed rule, any changes to streamline reporting are limited to meeting the primary goal of the sector monitoring program to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable.

*Comment 57:* CCCFA, Teem Fish, NEFS V, NEFS XI, and the Council supported our proposal to allow vessels using the audit EM model to continue reporting discards at the sub-trip level, rather than the haul level, using the Regional Administrator's authority to modify sector monitoring requirements to streamline the sector reporting process. The Council also recommended that we approve the "electronic monitoring audit model"

definition language requiring haul-level eVTR reporting so that if it is determined that haul-level information is needed in the future, the requirement can be implemented.

*Response:* We agree that sub-trip level reporting is sufficient for audit model EM vessels. We disagree that the electronic monitoring audit model definition should specify that vessels must submit eVTRs at the haul level. Using the authority granted to the Regional Administrator to streamline sector reporting requirements requires we comply with the Administrative Procedure Act when making changes. Thus, leaving the requirement for haul-level eVTRs in the regulatory definition would not offer an advantage in restoring the requirement in future, if it that were deemed necessary. Further, having the requirement codified in the regulations, but not in effect, could create confusion. Accordingly, we have modified the proposed regulatory definition of electronic monitoring audit model to eliminate the requirement for audit EM vessels to report haul-level eVTRs in this final rule.

#### *Comments on Additions to the List of Framework Items*

*Comment 58:* CLF commented in support of approving additional monitoring tools through a framework if the tools can achieve 100 percent monitoring coverage. CCCFA supported adding the Amendment 23 measures to the list of items that can be addressed through a framework if the changes to the measures are preceded by the Council framework review process.

*Response:* We agree and have approved the measure as proposed for the reasons explained in the proposed rule.

#### CHANGES FROM THE PROPOSED ACTION

In this final rule, we have made a number of changes to the proposed implementing regulations. Some of the changes correct errors, address inconsistencies, or clarify the proposed regulatory text. Other changes to the proposed implementing regulations are in response to further consideration of implementation needs and public

comments. In this final rule, we make the following changes to the proposed implementing regulations:

- Revise the proposed definition at § 648.2 for *electronic monitoring audit model* to remove the requirement to report discards at the haul level. This change from the proposed regulatory text streamlines the eVTR reporting requirement for EM audit model vessels and is consistent with how sectors are operating under the current operational audit model program. During development of this model under an exempted fishing permit, we determined trip-level reporting was sufficient and reduced the burden on vessels.
- Revise proposed text at § 648.11(h)(5)(vii)(I) to apply to all EM staff rather than only video reviewers. This provides NMFS with the opportunity to request a copy of valid contracts between monitoring service providers and all their staff to ensure a service provider meets all performance requirements, rather than limiting that opportunity to only video reviewers.
- Revise proposed text at § 648.11(h)(7)(v) to add video reviewers to the list of monitoring provider staff whose decertification may be considered by NMFS when determining whether to remove a monitoring service provider from the list of approved service providers.
- Revise proposed text at § 648.11(l)(2) to remove vessel monitoring plans from the list of items required to be approved as part of sector operations plans to be consistent with current practice and other proposed regulatory text. The proposed text was inconsistent with current practice and the other proposed EM requirements.
- Revise proposed text at § 648.11(l)(4) to clarify EM vessels cannot leave the dock without a functioning EM system, unless granted a waiver. The proposed text was inconsistent with current practice and the other proposed EM requirements.

- Revise proposed text at § 648.11(l)(5)(i) to clarify that NMFS will determine, and announce, EM video review rates separately from the ASM coverage target.
- Revise the proposed text at § 648.11(l)(10)(i)(A)(2) to remove the proposed requirement for vessel owners/operators to determine during their pre-trip electronic monitoring system check that the system has sufficient storage space available for the entire trip. Rather, vessels must perform a pre-trip system check to ensure the electronic monitoring system is operational prior to departing on a fishing trip. This change is being made in response to comments, as discussed above (see *Comments and Responses* above).
- Revise proposed text at § 648.11(l)(10)(i)(B) to clarify the proposed vessel monitoring plan approval process. The revised regulation clarifies that all changes to a VMP must be submitted to NMFS for review.
- Revise proposed text at § 648.11(l)(10)(i)(B)(7) to correct the internal citation to § 648.11(l)(10)(i)(A) and (B) to encompass electronic monitoring system requirements and vessel monitoring plan requirements for EM vessels.
- Revise proposed text at § 648.11(l)(10)(i)(C) to correct internal regulatory citations to regulations moved as part of this final rule.
- Added new text at § 648.11(l)(10)(i)(D)(1) to require a dockside monitor to be present before the vessel operator or crew begins offloading an MREM vessel, unless NMFS has issued the trip a waiver from the DSM program. This requirement was listed in the preamble of the proposed rule, but was inadvertently left out of the proposed regulations.
- Added new text at § 648.11(l)(10)(i)(D)(2) to require a vessel operator and crew to allow the dockside monitor access to the fish hold immediately following the offload in order to confirm all allocated groundfish were offloaded unless NMFS has issued the trip a waiver from the dockside monitoring program. This

requirement was listed in the preamble of the proposed rule, but was inadvertently left out of the proposed regulations.

- Revise proposed text at § 648.11(l)(10)(iv)(B)(1) to remove the proposed requirement that dealers offload fish below the minimum size from maximized retention electronic monitoring vessels before offloading other fish. This change is being made in response to comments (see *Comments and Responses* above) to allow industry members to determine the most efficient way to offload.
- Revise the proposed text at § 648.11(l)(10)(iv)(B)(2) to remove the proposed provision that allows dealers to report a mix of fish below the minimum size and the smallest market category of fish meeting the minimum size rather than reporting all fish below the minimum size as a separate market category. Elimination of this mixed reporting category is necessary to implement MREM as an operational program in our existing data systems. Further, dealers participating in the MREM EFP have opted to separate fish below the minimum size for market reasons.
- Revise the proposed prohibition at § 648.14(e)(3) to correct grammar.
- Revise the proposed prohibition at § 648.14(k)(2)(vii) to clarify that it is unlawful for any person to fish in a manner inconsistent with the requirements for vessels granted a waiver from the at-sea monitoring requirement on trips that are excluded from the at-sea monitoring requirement. This change is consistent with the Council's intent to exclude from the human ASM requirement only trips fishing in compliance with all requirements and is designed to help facilitate enforcement.
- Move the prohibition proposed to be codified at § 648.14(k)(2)(vii) to § 648.14(k)(14)(xvi) to keep prohibitions related to the sector program grouped together.

- Revise proposed text at § 648.14(k)(3)(iii) to remove ocean pout from the list of species dealers may receive from MREM vessels. This change is consistent with the Council’s intent for MREM vessels to discard zero possession stocks for which possession is prohibited (*i.e.*, zero-possession stocks) and is designed to help facilitate enforcement.
- Revise proposed text at § 648.14(k)(3)(v) to correct a typographical error.
- Added new text at § 648.14(k)(14)(xiv) and (xv) to add prohibitions complementing the new § 648.11(l)(10)(i)(D)(1) and (2). Those requirements were listed in the preamble of the proposed rule, but were inadvertently left out of the proposed regulations.
- Revise the proposed text at § 648.90(a)(4)(i)(B) to clarify that the management uncertainty buffer for the sector portion of the ACL for each allocated groundfish stock will default to zero in years in which the at-sea monitoring coverage target is 100 percent unless the Council determines a different management uncertainty buffer is warranted to help ensure catch does not exceed a sector sub-annual catch limit. This change clarifies the interaction between the default management uncertainty buffer and the Council process for setting management uncertainty buffers.

## **Classification**

NMFS is issuing this rule pursuant to sections 304(b)(3) and 305(d) of the Magnuson-Stevens Act, which provide specific authority for implementing this action. Pursuant to Magnuson-Stevens Act section 305(d), this action is necessary to carry out the Northeast Multispecies FMP, through administrative changes revising the existing implementing regulations for the groundfish sector monitoring program to be consistent with the industry-funded monitoring program regulations, moving the groundfish monitoring program implementing regulations to the same chapter as other industry-

funded monitoring programs, and improving the clarity of the existing regulations. The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Because this rule relieves a restriction by allowing sector groundfish trips fishing exclusively west of 71° 30' W. Longitude to fish without carrying an at-sea monitor, that measure is not subject to the 30-day delayed effectiveness requirement of the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d)(1). Currently, all groundfish trips by sector vessels are subject to the at-sea monitoring requirement and restricted from fishing without an at-sea monitor without a waiver, except those exclusively fishing using gillnets with a mesh size of 10 inches (25.4 cm) or greater in either the Inshore Georges Bank Stock Area, as defined at § 648.10(k)(3)(ii), and/or the Southern New England Broad Stock Area, as defined at § 648.10(k)(3)(iv). As explained in the EIS, monitoring places burdens of fishing vessels. The burdens include logistical planning; changing vessel operations to ensure safety of a human at-sea monitor; physically accommodating and feeding a human at-sea monitor; and the cost of hiring an at-sea monitor. Implementing the geographic exclusion from the at-sea monitoring program at § 648.11(l)(5)(iii) relieves the restriction against fishing without an at-sea monitor, thereby allowing vessels fishing exclusively west of 71° 30' W. Longitude to fish without hiring a human at-sea monitor, and thus relieves vessels of the at-sea monitoring burdens. Fishing behavior in recent years provides insight into the benefit of relieving this restriction. In fishing years 2016 through 2021, the number of groundfish vessels that would have benefited from relieving this restriction ranged from 19 to 30 vessels annually. During those years, 181 to 488 trips per year would have been excluded from the human ASM requirement. As of July 27, 2022, 9 vessels would have been excluded from the human ASM requirement on 51 groundfish trips during the current fishing year

that began on May 1, 2022. Therefore, there is good cause under 5 U.S.C. 553(d)(1) to establish an effective date less than 30 days after date of publication to exclude sector groundfish trips fishing exclusively west of 71° 30' W. Longitude from the requirement to carry an at-sea monitor.

The New England Fishery Management Council prepared a final EIS for Amendment 23 to the Northeast Multispecies FMP. The FEIS was filed with the Environmental Protection Agency on January 10, 2022; a notice of availability was published on January 21, 2022 (87 FR 3298). In approving Amendment 23 on April 12, 2022, NMFS issued a record of decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**). A brief summary of the impacts follows.

A human ASM target coverage of up to 100 percent, higher than past and current coverage levels, will be in place, if sufficient Federal funds are available, which should result in more accurate information on catch (landings and discards) of target and non-target species, and fully account for discard mortality. In the short term, improved catch accounting is expected to reduce fishing effort and fishing mortality, which in the long term should allow for rebuilding of overfished stocks. In the longer-term, analytical assessments should improve with better catch data. If the increased human ASM coverage target results in reduced groundfish fishing activity, then it may provide some minor short-term benefits to habitat. Over the long term, if achieving higher human ASM coverage contributes to higher catch limits, fishing effort could increase in the future, which could have negative impacts to habitat. The modifications in management measures may indirectly affect protected resources, but are not expected to have substantial impacts on protected resources. This action is expected to have a range of potential socioeconomic impacts, depending on the availability of Federal funding for monitoring and the ultimate at-sea monitoring coverage target. A target at-sea monitoring



coverage rate of up to 100 percent will be in place, if sufficient Federal funds are available, which will result in relatively neutral impacts on operating costs compared to those under past and current coverage levels. However, if no Federal funding were available to support industry costs, the ASM coverage rate target would be 40 percent, which would increase fleet wide operating costs by an estimated \$2.09 million per year. Economic effects could be lower if any subsidy is available to offset the cost of monitoring, or depending on the number of vessels that use EM in lieu of human at-sea monitors. Initial costs of installing and purchasing EM equipment may be high, which may have negative impacts in the short term, if not subsidized, but over the long term, EM may be more cost effective than human at-sea monitors. EM is expected to be more cost effective for vessels who fish more in the groundfish fishery (*i.e.*, more than 20 days per year). The human ASM coverage target for fishing year 2022 is 80 percent of sector groundfish trips subject to the monitoring requirement. NMFS will continue to reimburse sectors for 100 percent of their ASM and EM costs in fishing year 2022 through the Atlantic States Marine Fisheries Commission. In addition, increased monitoring coverage may be seen as overly burdensome by fishing communities. However, increased monitoring coverage, up to 100-percent monitoring coverage, improves the enforceability of the FMP and reduces the risk of non-compliance, which should improve the fairness and equitability of management measures. In the short term, economic impacts of increased monitoring coverage on human communities would be reduced while Federal reimbursements for monitoring costs are available. Impacts over the long term will vary depending on whether Federal reimbursements of monitoring costs continue into the future.

This rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), including all the analyses in the final EIS, the IRFA summary in the proposed rule, a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and the information below. A copy of the IRFA, contained in the Environmental Impact Statement, is available from the Council (see **ADDRESSES**). A description of the action, statement of the necessity for the action, and the objectives of this action, are contained in Amendment 23, the IRFA, the beginning of this section in the preamble, and in the **SUMMARY** section of the preamble. No relevant Federal rules duplicate, overlap, or conflict with this rule. A summary of the analysis follows.

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

We received several comments expressing concern about the economic effects of this action and we have summarized these comments in the comments and responses section of this rule. None of these comments were directly related to the IRFA, or provided information that changed the conclusions of the IRFA. The Chief Counsel for the Office of Advocacy of the Small Business Administration (SBA) did not file any comments. We made no changes to the proposed rule measures in response to those comments.

*Description and Estimate of the Number of Small Entities to Which this Rule Would Apply*

This action would regulate all commercial fishing businesses issued a Federal limited access Northeast multispecies vessel permit and/or a Northeast multispecies dealer permit. As of June 1, 2020, NMFS had issued 828 commercial limited access groundfish permits associated with vessels and 148 permits associated with dealers.

Therefore, 976 permits are regulated by this action. Each vessel or dealer may be individually owned or part of a larger corporate ownership structure, and for RFA purposes, it is the ownership entity that ultimately would be regulated by the action. Ownership entities are identified on June 1 of each year, based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Northeast Federal fishing permit. The current ownership data set is based on calendar year 2019 permits and contains gross sales associated with those permits for calendar years 2017 through 2019.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2017 through 2019. Ownership data collected from vessel permit holders indicate that there are 667 distinct business entities that hold at least one vessel permit regulated by the action. Of these, all are engaged primarily in commercial fishing, and 80 did not have any revenues (were inactive) in 2019. Of these distinct business entities, 661 are categorized as small entities and 6 are categorized as large entities, per the NMFS guidelines. Ownership data collected from dealer permit holders indicate there are 148 distinct business entities that hold at least one dealer permit regulated by this action. Of these, 135 distinct businesses are categorized as small entities and 13 are categorized as large entities, per the NMFS guidelines.

*Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes*

The New England Fishery Management Council selected all alternatives that met the objectives of the action, and minimized costs, to provide regulated businesses the ability to choose the monitoring options that best suit their operations while meeting the catch accounting requirements.

The implementing regulations in this final rule:

- Replace the current process for calculating an annual ASM coverage target with a fixed monitoring coverage target as a percentage of trips, dependent on Federal funding.
- Approve additional EM technologies as an alternative to human at-sea monitors;
- Exclude from the monitoring requirement all trips in geographic areas with expected low groundfish catch;
- Require periodic evaluation of the monitoring program and exclusions from the monitoring requirement;
- Remove the management uncertainty buffer from the portion of the ABC allocated to the sector catch share, if warranted, when the monitoring coverage target is 100 percent; and
- Grant authority to the Northeast Regional Administrator to revise sector reporting requirements to streamline reporting for the industry.

Amendment 23 examined a range of options that adjust the current monitoring program to improve accounting and accuracy of collected catch data. The range included variable and fixed target coverage levels (25, 50, 75, and 100 percent) based on catch or trips, human ASM, two types of EM, and flexibility to allow sectors to choose the tools used to meet the sector monitoring requirement. Ultimately, the Council chose a fixed coverage target as high as could be achieved at zero cost to industry to reliably estimate

catch and to form the basis of a future analysis to further evaluate the fishery and its monitoring program. In years that the ASM coverage target is set at 100 percent, the management uncertainty buffer will default to zero for the sector sub-ACL for allocated stocks, and will remain at zero if warranted, thereby increasing sector quotas and potential revenues. The Council also set a new lower cap on the coverage target that will be set when industry is paying for monitoring, as well as approving two EM models that sectors could choose to use to provide for sustained participation and minimize adverse economic impacts on communities to the extent practicable. Amendment 23 excludes sector fishing trips fished in their entirety west of 71° 30' W. Longitude from the ASM requirement.

The effects of this action depend on available Federal funding to defray industry costs and the number of vessels that use EM in lieu of human at-sea monitors. EM is predicted to be substantially more cost effective, particularly for the subset of most active vessels in the groundfish fishery (those fishing more than 30-50 days per year). However, combined with options to use EM, capping the ASM coverage target at 40 percent when Federal funds do not subsidize industry costs, and incorporating SBRM observer coverage, Amendment 23 reduces the potential increase in costs to industry through a range of considerations and factors.

If industry costs are fully subsidized and the ASM coverage target is 100 percent, the fishery is predicted to generate approximately \$5 million in additional revenues compared to the status quo (estimated \$51.3 million operational profit for the fleet in 2018), primarily due to the removal of the management uncertainty buffer from the sector quotas. These additional revenues are predicted to increase profits by approximately \$4.9 million because the industry would not pay for its monitoring costs. At all coverage levels less than 100 percent, the management uncertainty buffers are not removed.

This action implements a minimum ASM coverage target of 40 percent, which applies in years 5 and later, or in years 1-4 if Federal funds cannot fully subsidize industry costs for a higher coverage target and industry is required to pay for its monitoring costs. Under the scenario where the coverage target is 40 percent and industry is required to pay for its full monitoring costs because of an absence of Federal funding to defray any industry costs, the fleet is predicted to generate between \$1.5-2.0 million less profit than under the status quo, or about a 4-percent reduction.

Vessels that opt to make fishing trips exclusively west of 71° 30' W. Longitude are excluded from the ASM requirement. This may increase profits if the minimum coverage target of 40 percent is implemented due to a lack of Federal subsidies for industry monitoring costs. Similarly, when the ASM coverage target is set higher than 40 percent, vessels opting to fish in this geographic area will reduce monitoring costs subsidized by Federal funds, allowing Federal funding to cover monitoring for a longer duration or at a higher coverage target.

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Rule*

A description of the projected reporting, recordkeeping, and other compliance requirements of this action, including an estimate of the classes of small entities that will be subject to the requirements is contained in the Information Collection List for 0648-0800 available on the Office of Information and Regulatory Affairs (OIRA) website at [reginfo.gov](http://reginfo.gov) and summarized below.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides. The agency shall explain the actions a small entity is required to take

to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (see **ADDRESSES**), and the guide, *i.e.*, permit holder letter, will be sent to all holders of permits for the fishery. The guide and this final rule will be available upon request.

This final rule contains a new temporary collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) control number 0648-0800. This temporary information collection was created due to timing conflicts with OMB Control Number 0648-0605, Northeast Multispecies Amendment 16, which is currently up for renewal. Once 0648-0605 is renewed and this final rule temporary collection is approved, NOAA will submit a request to merge this temporary collection (0648-0800) into 0648-0605. This rule creates two new requirements related to the new maximized retention electronic monitoring model. The first requirement is for maximized retention electronic monitoring vessels to have dockside monitoring and includes notifications, database requirements, and the costs of monitoring. The second requirement is for monitoring and reporting service providers to apply to NMFS for approval to provide dockside monitoring service to groundfish sectors, including responding to any denial of an application. The estimated average public reporting burden for the requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is presented in the table below.

Requirement	Responses	Hours	Dollars
Dockside Monitoring Notifications, Database Requirements, and Monitoring Costs	49,200	16,236	2,805,876
Service Provider Application and Response to Denial	4	40	12

Total	49,204	16,276	2,805,888
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We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under Review" or by using the search function and entering the title of the collection.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 29, 2022.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:



## **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.2 by:

- a. Revising the definition for “Electronic monitoring”;
- b. Adding the definitions for “Electronic monitoring audit model”, “Electronic monitoring maximized retention model”, and “Electronic monitoring provider staff” in alphabetical order;
- c. Revising the definition for “Observer or monitor”;
- d. Removing the definition for “Observer/sea sampler”;
- e. Republishing in alphabetical order the definition of “Ocean quahog”;
- f. Revising the definition for “Slippage in the Atlantic herring fishery” and placing the definition into alphabetical order;
- g. Revising the definition for “Slip(s) or slipping catch in the Atlantic herring fishery”; and
- h. Revising the definition for “Video reviewer”.

The revisions, additions, and republication read as follows:

### **§ 648.2 Definitions.**

\* \* \* \* \*

*Electronic monitoring* means a network of equipment that uses a software operating system connected to one or more technology components, including, but not limited to, cameras and recording devices to collect data on catch and vessel operations. With respect to the groundfish sector monitoring program, electronic monitoring means any equipment that is used to meet sector monitoring requirements in § 648.11 in lieu of

at-sea monitors as part of an approved sector at-sea monitoring program, including the audit model and maximized retention model.

*Electronic monitoring audit model* with respect to the groundfish sector monitoring program means a program in which all eligible trips must be electronically monitored; fish must be handled in view of cameras; allowed discarding must occur at controlled points in view of cameras; species identification and length must be collected for regulated species and ocean pout discards for catch estimation; discards are reported at the sub-trip level; and electronic monitoring data are compared to the area fished, regulated species and ocean pout discards, and other information reported on the vessel trip report on a subset of trips for validation.

\* \* \* \* \*

*Electronic monitoring maximized retention model* with respect to the groundfish sector monitoring program, means a program in which all eligible trips are electronically monitored; fish must be handled in view of cameras; allowed discarding must occur at controlled points in view of cameras; all allocated regulated species stocks must be retained; electronic monitoring is used to verify compliance; and offloads are subject to observation by dockside monitors.

*Electronic monitoring provider staff* means any video reviewer, or any person employed or contracted by an electronic monitoring service provider to provide electronic monitoring services to vessels.

\* \* \* \* \*

*Observer or monitor* means any person authorized by NMFS to collect observer information, operational fishing data, biological data, or economic data for conservation and management purposes on or from fishing vessels or federally permitted dealers as required by the regulations, including, but not limited to, observers, at-sea monitors, observer/sea samplers, portside samplers, or dockside monitors.

*Ocean quahog* means the species *Arctica islandica*.

\* \* \* \* \*

*Slippage in the Atlantic herring fishery* means discarded catch from a vessel issued an Atlantic herring permit that is carrying an observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by an observer or monitor after the catch is on board. Slippage also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and made available for sampling and inspection by an observer or monitor are also not considered slippage.

*Slip(s) or slipping catch in the Atlantic herring fishery* means discarded catch from a vessel issued an Atlantic herring permit that is carrying an observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by an observer or monitor after the catch is on board. Slip(s) or slipping catch also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and

inspection by an observer or monitor, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

\* \* \* \* \*

*Video reviewer* means any electronic monitoring service provider staff approved/certified or training to be approved/certified by NMFS for providing electronic monitoring video review services consistent with electronic monitoring program requirements.

\* \* \* \* \*

3. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.10 by revising paragraph (f)(4)(i) to read as follows:

**§ 648.10 VMS and DAS requirements for vessel owners/operators.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(i) For trips greater than 24 hours, the owner or operator of a limited access or LAGC scallop vessel with an IFQ permit that fishes for, possesses, or retains scallops, and is not fishing under a Northeast Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), Northern Gulf of Maine research set-aside (RSA) trips, and trips accompanied by an observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) Vessel trip report (VTR) serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept; and

(D) Total pounds of all fish kept.

\* \* \* \* \*

4. Effective December 15, 2022, amend § 648.11 by adding reserved paragraph (l)(4) and paragraph (l)(5) to read as follows:

**§ 648.11 Monitoring coverage.**

\* \* \* \* \*

(l) \* \* \*

(4) [Reserved]

(5) *Sector monitoring coverage levels.* (i) through (ii) [Reserved]

(iii) *Geographic exclusion from the at-sea monitoring program.* Vessels fishing exclusively west of 71° 30' W. Longitude on a sector trip are excluded from the requirement to carry an at-sea monitor. Vessels on a trip excluded from the at-sea monitoring requirement under this paragraph (l)(5)(iii) must comply with the VMS declaration requirements at § 648.10(g)(3), and the transiting requirements at § 648.81(e) when east of 71° 30' W. Longitude. Vessels using electronic monitoring to satisfy the sector monitoring requirement in this section must have their system turned on and comply with their vessel monitoring plan on all trips, including trips fishing exclusively west of 71° 30' W. Longitude.

\* \* \* \* \*

5. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], further amend § 648.11 by:

a. Revising paragraphs (a), (b), (d), (h)(1), (h)(3)(vii), and (h)(3)(ix) and (x);

b. Adding introductory text to paragraph (h)(5);

c. Revising paragraphs (h)(5)(i) through (iv), (vi), and (vii), (h)(7), (i) heading, (i)(1) and (2), (i)(3)(i), (i)(4)(ii), and (i)(5) and (6);

d. Adding paragraph (i)(7); and

e. Revising paragraphs (j), (k)(4)(i) and (ii), (l), (m)(1)(i) introductory text, (m)(1)(v), (m)(2)(iii)(A), (m)(4)(i), (m)(6) introductory text, and (n)(2) introductory text.

The revisions and additions read as follows:

**§ 648.11 Monitoring coverage.**

(a) *Coverage.* The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, Northeast multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section. The requirements of this section do not apply to vessels with only a Federal private recreational tilefish permit.

(b) *Facilitating coverage.* If requested by the Regional Administrator or their designees, including observers, monitors, and NMFS staff, to be sampled by an observer or monitor, it is the responsibility of the vessel owner or vessel operator to arrange for and facilitate observer or monitor placement. Owners or operators of vessels selected for observer or monitor coverage must notify the appropriate monitoring service provider before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners or permit holder letters.

\* \* \* \* \*

(d) *Vessel requirements associated with coverage.* An owner or operator of a vessel on which an observer or monitor is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer or monitor access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's or monitor's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer or monitor, and allow the observer or monitor access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the observer or monitor in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the observer or monitor, as specified by the Regional Administrator, ensuring that transfers of observers or monitors at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the observers or monitors involved.

(6) Allow the observer or monitor free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the observer or monitor to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

\* \* \* \* \*

(h) \* \* \*

(1) *General.* An entity seeking to provide monitoring services, including services for IFM Programs described in paragraph (g) of this section, must apply for and obtain approval from NMFS following submission of a complete application. Monitoring services include providing observers, monitors (at-sea monitors and portside samplers), and/or electronic monitoring. A list of approved monitoring service providers shall be distributed to vessel owners and shall be posted on the NMFS Fisheries Sampling Branch (FSB) website: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>.

\* \* \* \* \*

(3) \* \* \*

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for any observers, monitors (at-sea or dockside/roving monitors), or electronic monitoring provider staff who provide electronic monitoring services onboard vessels, whether contracted or directly employed by the service provider, during their period of employment (including during training).

(A) A monitoring service provider must hold Workers' Compensation and Maritime Employer's Liability for observers, monitors, vessel owners, and their operations. The minimum combined coverage required is \$5 million.

(B) An electronic monitoring service provider must hold Worker's Compensation and commercial general liability coverage for electronic monitoring provider staff. The minimum combined coverage required is \$1 million.

(C) Upon request by a vessel owner, operator, or vessel manager, a monitoring service provider must provide a certificate of insurance, or other evidence, that demonstrates they have the required coverages under paragraphs (h)(3)(vii)(A) and (B) of this section as appropriate.

\* \* \* \* \*



(ix) The names of its fully equipped certified observers, monitors, or video reviewers on staff; or a list of its training candidates (with resumes) and a request for an appropriate NMFS-certified training class. All training classes have a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an emergency with an observer, monitor, or electronic monitoring provider staff on a vessel at sea or in port, including, but not limited to, personal injury, death, harassment, or intimidation. The EAP shall include communications protocol and appropriate contact information in an emergency.

\* \* \* \* \*

(5) *Responsibilities of monitoring service providers.* To maintain an approved monitoring service provider status, a monitoring service provider, including electronic monitoring service providers, must demonstrate an ability to provide or support the following monitoring services:

(i) *Certified observers or monitors.* Provide observers or monitors that have passed a NMFS-certified Observer or Monitor Training class pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a fishing vessel, unless the monitoring service provider refuses to deploy an observer or monitor on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section.

(ii) *Support for observers, monitors, or electronic monitoring provider staff.* Ensure that each of its observers, monitors, or electronic monitoring provider staff procures or is provided with the following:

(A) All necessary transportation, lodging costs and support for arrangements and logistics of travel for observers, monitors, or electronic monitoring provider staff to and from the initial location of deployment, to all subsequent vessel assignments, to any debriefing locations, and for appearances in Court for monitoring-related trials as necessary;

(B) Lodging, per diem, and any other services necessary for observers, monitors, or electronic monitoring provider staff assigned to a fishing vessel or to attend an appropriate NMFS training class;

(C) The required observer, monitor, or electronic monitoring equipment, in accordance with equipment requirements, prior to any deployment and/or prior to certification training; and

(D) Individually assigned communication equipment, in working order, such as a mobile phone, for all necessary communication. A monitoring service provider may alternatively compensate observers or monitors for the use of the observer's or monitor's personal mobile phone, or other device, for communications made in support of, or necessary for, the observer's or monitor's duties.

(iii) *Deployment logistics.* (A) Assign an available observer or monitor to a vessel upon request. For service providers contracted to meet the requirements of the Northeast multispecies monitoring program in paragraph (l) of this section, assign available at-sea monitors, electronic monitoring provider staff, and other approved at-sea monitoring mechanisms fairly and equitably in a manner that represents fishing activities within each sector throughout the fishing year without regard to any sector manager or vessel representative preference.

(B) Enable an owner, operator, or manager of a vessel to secure monitoring coverage or electronic monitoring technical support when requested, 24 hours per day, 7 days per week via a telephone or other notification system that is monitored a minimum of four times daily to ensure rapid response to industry requests.

(iv) *Observer deployment limitations.* (A) A candidate observer's first several deployments and the resulting data shall be immediately edited and approved after each trip by NMFS prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

(B) For the purpose of coverage to meet SBRM requirements in § 648.18, unless alternative arrangements are approved by NMFS, a monitoring service provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(C) For the purpose of coverage to meet IFM requirements in this section, a monitoring service provider may deploy any observer or monitor on the same vessel for more than two consecutive multi-day trips and more than twice in any given month for multi-day deployments.

\* \* \* \* \*

(vi) *Observer and monitor training requirements.* Ensure all observers and monitors attend and complete a NMFS-certified Observer or Monitor Training class. Requests for training must be submitted to NMFS 45 calendar days in advance of the requested training. The following information must be submitted to NMFS at least 15 business days prior to the beginning of the proposed training: A list of observer or monitor candidates; candidate resumes, cover letters and academic transcripts; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's

criminal convictions, if any. A medical report certified by a physician for each candidate is required 7 business days prior to the first day of training. CPR/First Aid certificates and a final list of training candidates with candidate contact information (email, phone, number, mailing address and emergency contact information) are due 7 business days prior to the first day of training. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS minimum eligibility standards for observers or monitors as described on the National Observer Program website: <https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

(vii) *Reports and requirements*—(A) *Deployment reports*. (1) Report to NMFS when, where, to whom, and to what vessel an observer or monitor has been deployed, as soon as practicable, and according to requirements outlined by NMFS. The deployment report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

(2) Ensure that the raw (unedited) data collected by the observer or monitor is provided to NMFS at the specified time per program. Electronic data submission protocols will be outlined in training and may include accessing Government websites via personal computers/devices or submitting data through Government issued electronics.

(B) *Safety refusals*. Report to NMFS any trip or landing that has been refused due to safety issues (*e.g.*, failure to hold a valid U.S. Coast Guard (USCG) Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's or monitor's safety checklist) within 12 hours of the refusal.

(C) *Biological samples*. Ensure that biological samples, including whole marine mammals, sea turtles, sea birds, and fin clips or other DNA samples, are stored/handled properly and transported to NMFS within 5 days of landing. If transport to NMFS

Observer Training Facility is not immediately available then whole animals requiring freezing shall be received by the nearest NMFS freezer facility within 24 hours of vessel landing.

(D) *Debriefing*. Ensure that the observer, monitor, or electronic monitoring provider staff remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office of Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload or electronic monitoring trip report submission. If requested by NMFS, an observer or monitor that is at sea during the 2-week period must contact NMFS upon his or her return. Monitoring service providers must pay for travel and land hours for any requested debriefings.

(E) *Availability report*. The monitoring service provider must report to NMFS any inability to respond to an industry request for observer or monitor coverage due to the lack of available observers or monitors as soon as practicable. Availability report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

(F) *Incident reports*. Report possible observer, monitor, or electronic monitoring provider staff harassment, discrimination, concerns about vessel safety, or marine casualty; concerns with possible electronic monitoring system tampering, data loss, or catch handling protocols; or observer or monitor illness or injury; or other events as specified by the Regional Administrator; and any information, allegations, or reports regarding observer, monitor, or electronic monitoring provider staff conflict of interest or breach of the standards of behavior, to NMFS within 12 hours of the event or within 12 hours of learning of the event.

(G) *Status report*. (1) Provide NMFS with an updated list of contact information for all observers or monitors that includes the identification number, name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and

must include whether or not the observer or monitor is “in service,” indicating when the observer or monitor has requested leave and/or is not currently working for an industry-funded program.

(2) Place any federally contracted observer not actively deployed on a vessel for 30 days on Leave of Absence (LOA) status (or as specified by NMFS) according to most recent Information Technology Security Guidelines.

(3) Ensure federally contracted observers on LOA for 90 days or more conduct an exit interview with NMFS and return any NMFS issued gear and Common Access Card (CAC), unless alternative arrangements are approved by NMFS. NMFS requires 2-week advance notification when a federally contracted observer is leaving the program so that an exit interview may be arranged and gear returned.

(H) *Vessel contract.* Submit to NMFS, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and those entities requiring monitoring services.

(I) *Observer, monitor, or electronic monitoring provider staff contract.* Submit to NMFS, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and specific observers, monitors, or electronic monitoring provider staff.

(J) *Additional information.* Submit to NMFS, if requested, copies of any information developed and/or used by the monitoring service provider and distributed to vessels, observers, monitors, or electronic monitoring provider staff such as informational

pamphlets, payment notification, daily rate of monitoring or review services, description of observer or monitor duties, etc.

(K) *Discard estimates.* Estimate discards for each trip and provide such information to the sector manager and NMFS when providing monitoring services to meet catch estimation and/or at-sea or electronic monitoring service requirements in paragraph (I) of this section.

(L) *Data system.* If contracted to meet the requirements of the groundfish sector monitoring program in paragraph (I) of this section, maintain an electronic monitoring system to record, retain, and distribute to NMFS upon request for a minimum of 12 months after receiving notice from NMFS that catch data are finalized for the fishing year, the following information:

(1) The number of at-sea monitor deployments and other approved monitoring equipment deployments or video reviews, including any refusal to provide service when requested and reasons for such refusals;

(2) Incident/non-compliance reports (e.g., failure to offload catch);

(3) Vessel hail reports and landings records;

(4) Electronic monitoring data and reports; and

(5) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act.

(M) *Data retention.* Ensure that electronic monitoring data and reports are retained for a minimum of 12 months after catch data are finalized for the fishing year. NMFS will notify monitoring service providers of the catch data finalization date each year. The electronic monitoring service provider must provide NMFS access to electronic monitoring data or reports upon request.

(N) *Software requirements.* Provide NMFS with all software necessary for accessing, viewing, and interpreting the data generated by the electronic monitoring system, including submitting the agency's secondary review data to the application programming interface and maintenance releases to correct errors in the software or enhance software functionality. The software must:

(1) Support a "dual user" system that allows NMFS to complete and submit secondary reviews to the application programming interface.

(2) Allow for the export or download of electronic monitoring data in order for the agency to make a copy if necessary.

(O) *Software training.* Provide software training for NMFS staff.

(P) *Facilitation.* Provide the following to NMFS upon request:

(1) Assistance in electronic monitoring system operations, diagnosing/resolving technical issues, and recovering lost or corrupted data;

(2) Responses to inquiries related to data summaries, analyses, reports, and operational issues; and

(3) Access to video reviewers for debriefing sessions.

(Q) *Litigation support.* Provide technical and expert information substantiating electronic monitoring system data, testing procedures, error rates, peer review or other issues raised in litigation, including but not limited to, a brief summary of the litigation and any court findings on the reliability of the technology.

\* \* \* \* \*

(7) *Removal of monitoring service provider from the list of approved service providers.* A monitoring service provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved monitoring service providers. Such notification shall specify the reasons for the pending removal. A



monitoring service provider that has received notification that it is subject to removal from the list of approved monitoring service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the monitoring service provider that the monitoring service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the monitoring service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the monitoring service provider shall be automatically removed from the list of approved monitoring service providers. The decision to remove the monitoring service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved monitoring service providers does not necessarily prevent such monitoring service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Observers and monitors under contract with observer monitoring service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers or monitors are deployed at the time the monitoring service provider is removed from the list of approved monitoring service providers. A monitoring service provider removed from the list of approved monitoring service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if a monitoring service provider may remain on the list of approved monitoring service providers:

- (i) Failure to meet the requirements, conditions, and responsibilities of monitoring service providers specified in paragraphs (h)(5) and (6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing monitoring services under this section; and

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer, monitor, video reviewer, or monitoring service provider.

(i) *Observer, monitor, or video reviewer certification—(1) Requirements.* To be certified as an observer, or monitor, or video reviewer, a monitoring service provider employee or contractor must meet the criteria in paragraphs (i)(1) through (3) of this section for observers, or paragraphs (i)(1), (2), and (4) of this section for monitors, and paragraphs (i)(1), (2), and (5) of this section for video reviewers, respectively. Observers are deemed to have satisfied the basic minimum eligibility requirements if they meet the NMFS National Minimum Eligibility Standards for observers specified at the National Observer Program website: <https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

(2) *Training.* In order to provide observer or monitor services and be deployed on any fishing vessel, a candidate observer or monitor must have passed an appropriate NMFS-certified Observer or Monitor Training course and must adhere to all NMFS

program standards and policies. In order to perform electronic monitoring video review, a candidate video reviewer must have passed an appropriate NMFS-certified Video Review Training course and must adhere to all NMFS program standards and policies. NMFS will immediately notify any candidate that fails training and the monitoring service provider. Observer or monitor training may include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. Contact NMFS for the required number of program specific observer and monitor training certification trips for full certification following training.

(3) \* \* \*

(i) Have a valid NMFS fisheries observer certification pursuant to paragraph (i)(1) of this section;

\* \* \* \* \*

(4) \* \* \*

(ii) Have a valid NMFS certification pursuant to paragraph (i)(1) of this section;

\* \* \* \* \*

(5) *Video reviewer requirements.* All video reviewers must:

(i) Hold a high school diploma or legal equivalent;

(ii) Have a valid NMFS certification pursuant to paragraph (i)(1) of this section;

and

(iii) Accurately record sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(6) *Probation and decertification.* NMFS may review observer, monitor, and video reviewer certifications and issue observer, monitor, and video reviewer certification probations and/or decertifications as described in NMFS policy.

(7) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(6) of this section, NMFS shall issue a written decision to decertify the observer, monitor, or video reviewer to the observer, monitor, or video reviewer and approved monitoring service provider via certified mail at the observer's, monitor's, or video reviewer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

(j) *Coverage.* In the event that a vessel is requested by the Regional Administrator to carry a fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved sector at-sea monitoring program specified in paragraph (l) of this section for the same trip, only the fisheries observer is required to go on that particular trip. Vessels using electronic monitoring to satisfy the groundfish sector monitoring program requirement must comply with their vessel monitoring plan on all trips, including a trip that has been selected to carry, or a trip that carries, a fisheries observer.

(k) \* \* \*

(4) \* \* \*

(i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must arrange for carrying an observer that has passed a NMFS-

certified Observer Training class certified by NMFS from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/FSB website: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure an observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hr, if the conditions of this paragraph (k)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

\* \* \* \* \*

(l) *NE multispecies observer coverage*—(1) *Groundfish sector monitoring program goals and objectives*. The primary goal of the at-sea/electronic monitoring program is to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable. The following goals and objectives of groundfish monitoring programs are equally-weighted secondary goals by which monitoring programs established for the NE multispecies are to be designed to be consistent with:

(i) Improve documentation of catch:

(A) Determine total catch and effort, for each sector and common pool, of target or regulated species and ocean pout; and

(B) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(ii) Reduce the cost of monitoring:

(A) Streamline data management and eliminate redundancy;

(B) Explore options for cost-sharing and deferment of cost to industry; and

(C) Recognize opportunity costs of insufficient monitoring.

(iii) Incentivize reducing discards:

(A) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(B) Collect information by gear type to accurately calculate discard rates.

(iv) Provide additional data streams for stock assessments:

(A) Reduce management and/or biological uncertainty; and

(B) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(v) Enhance safety of monitoring program.

(vi) Perform periodic review of monitoring program for effectiveness.

(2) *Sector monitoring programs.* A sector must develop and implement an at-sea and/or electronic monitoring program that may be approved by NMFS as both sufficient to monitor catch, discards, and use of sector ACE; and as consistent with the sector monitoring program goals and objectives. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to § 648.87(b)(2)(xi), and must meet the operational standards specified in paragraph (1)(10)

of this section. Maximized retention electronic monitoring and audit electronic monitoring models, meeting the requirements in paragraph (l)(10) of this section, may be used in place of at-sea monitoring to ensure a sector's monitoring programs may be approved. Other types of electronic monitoring may be used in place of at-sea monitors if the technology is deemed sufficient by NMFS, in a manner consistent with the Administrative Procedure Act, for a specific trip type based on gear type and area fished. The Regional Administrator will approve or disapprove at-sea/electronic programs as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act.

(3) *Pre-trip notification.* For the purpose of selecting vessels for observer or at-sea monitor deployment, as instructed by the Regional Administrator, the owner, operator, or manager of a vessel (*i.e.*, vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advance notice to NMFS at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85 of the following: The vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer or at-sea monitor deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used, unless otherwise specified in this paragraph (l) or notified by the Regional Administrator. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly pre-trip notification, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the

following week and provide the vessel's trip-plans for that week, including each trip's date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used. Pre-trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued either an observer notification, an at-sea monitor notification, or a waiver by NMFS.

(4) *Vessel selection for observer or at-sea monitor coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer or at-sea monitor for the specified trip within 24 hr of the vessel owner's, operator's or manager's pre-trip notification of the prospective trip, as specified in paragraph (1)(2) of this section. All pre-trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the vessel's trip plan that was called in to NMFS. Confirmation numbers and the vessel's observer or observer waiver status for pre-trip notification calls remain valid for 48 hr from the intended sail date. After a trip begins, that trip's confirmation number and observer or observer waiver status remains valid until the trip ends. If a trip is interrupted and the vessel returns to port due to bad weather or other circumstance beyond the operator's control, the vessel's observer or observer waiver status and confirmation number for the interrupted trip remains the same if the vessel departs within 48 hr from the vessel's return to port. If the layover time is greater than 48 hr, the vessel owner, operator, or manager must provide a new pre-trip notification. If an observer or at-sea monitor is assigned to a particular trip, a vessel may not leave port without the at-sea monitor on board, unless NMFS issues a waiver. If a vessel is using electronic monitoring to comply with the monitoring requirements of this



part, it may not leave port without an operational electronic monitoring system on board, unless NMFS issues a waiver.

(5) *Sector monitoring coverage levels.* Coverage levels for an at-sea or electronic monitoring program, including video review requirements, shall be specified by NMFS, pursuant to paragraph (l)(5)(i) of this section.

(i) *At-sea monitoring coverage target.* The at-sea monitoring coverage target for the sector monitoring program will be set as a percentage of all eligible sector trips based on available Federal funding for NMFS and industry cost responsibilities as defined in paragraph (g)(3) of this section. Sectors are responsible for industry costs for at-sea monitoring coverage up to the coverage target for all trips not observed by a Northeast Fishery Observer Program observer. In fishing years 2022, 2023, 2024, and 2025, the at-sea monitoring (ASM) coverage target will be set at the highest level that available Federal funding for NMFS and industry cost responsibilities supports, up to 100 percent of trips. Beginning in fishing year 2026, the target coverage will be set at 40 percent of trips, unless replaced by the New England Fishery Management Council after a review, as detailed in paragraph (l)(5)(v) of this section. In the absence of available Federal funds sufficient to fund both NMFS costs and industry costs associated with a coverage target of at least 40 percent of all sector trips, sectors must pay the industry's costs for coverage necessary to achieve a 40-percent coverage target. As an example, if, after paying NMFS costs, available Federal funding is sufficient only to fund industry costs for 15-percent coverage, sectors must pay the industry costs for the remaining 25-percent coverage to achieve a 40-percent coverage target. Any coverage provided by the Northeast Fisheries Observer Program through deployment of an observer would be deducted from the industry's cost responsibility. To ensure coverage is both sufficient to monitor sector catch, discards, and sector ACE; and consistent with sector monitoring goals and objectives, at-sea monitoring coverage may be higher than the at-sea monitoring coverage

target, up to 100 percent of all eligible trips, if available Federal funding is sufficient for NMFS and industry cost responsibilities, respectively. NMFS will announce the coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS, if Federal funding information is available. NMFS will determine, and announce, EM video review rates separately from the ASM coverage target. NMFS may evaluate and modify video review rates on a regular basis.

(ii) *Gear-based exclusion from the at-sea monitoring program.* A sector vessel that notifies NMFS of its intent to exclusively fish using gillnets with a mesh size of 10-inch (25.4-cm) or greater in either the Inshore Georges Bank (GB) Stock Area, as defined at § 648.10(k)(3)(ii), and/or the Southern New England (SNE) Broad Stock Area, as defined at § 648.10(k)(3)(iv), is not subject to the coverage level for at-sea monitoring specified in paragraph (l)(5)(i) of this section provided that the trip is limited to the Inshore GB and/or SNE Broad Stock Areas and that the vessel only uses gillnets with a mesh size of 10-inches (25.4-cm) or greater. When on such a trip, other gear may be on board provided that it is stowed and not available for immediate use as defined in § 648.2. A sector trip fishing with 10-inch (25.4-cm) mesh or larger gillnets will still be subject to at-sea monitoring coverage if the trip declares its intent to fish in any part of the trip in the Gulf of Maine (GOM) Stock area, as defined at § 648.10(k)(3)(i), or the Offshore GB Stock Area, as defined at § 648.10(k)(3)(iii). Vessels using electronic monitoring to satisfy the sector monitoring requirement in this section must have their system turned on and comply with their vessel monitoring plan on all trips, including a trip that is limited to the Inshore GB and/or SNE Broad Stock Areas where the vessel only uses gillnets with a mesh size of 10-inches (25.4-cm) or greater.

(iii) *Geographic exclusion from the at-sea monitoring program.* Vessels fishing exclusively west of 71° 30' W. Longitude on a sector trip are excluded from the requirement to carry an at-sea monitor. Vessels on a trip excluded from the at-sea

monitoring requirement under this paragraph (l)(5)(iii) must comply with the VMS declaration requirements at § 648.10(g)(3), and the transiting requirements at § 648.81(e) when east of 71° 30' W. Longitude. Vessels using electronic monitoring to satisfy the sector monitoring requirement in this section must have their system turned on and comply with their vessel monitoring plan on all trips, including trips fishing exclusively west of 71° 30' W. Longitude.

(iv) *Waivers*. In addition to the safety waivers in paragraph (c) of this section, NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements for the following reasons.

(A) *Funding waivers*. NMFS will issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements if coverage is unavailable due to insufficient funding for NMFS cost responsibilities as defined in paragraph (g)(3) of this section.

(B) *Logistics waivers*. NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements in this section for logistical and technical reasons, including, but not limited to: No monitor is available; the assigned observer is unable to make the trip; the trip will have no fishing effort; and electronic monitoring system technical problems.

(C) *Set-only trip waivers*. Vessels on a set-only trip, as defined at § 648.2, are excluded from the groundfish sector monitoring program requirements in paragraph (l) of this section. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, that vessel may turn off its cameras on a set-only trip.

(v) *Review of exclusions from the at-sea monitoring program*. A New England Fishery Management Council review of the exclusions from the at-sea monitoring program in paragraphs (l)(5)(ii) and (iii) of this section will evaluate whether the exclusions continue to meet the intent of the New England Fishery Management Council

to exclude trips with little catch of regulated species and ocean pout. The review will be conducted using complete data from 2 fishing years once the data are available (fishing years 2022 and 2023) and every 3 years after the initial review.

(6) *Groundfish sector monitoring program review.* A New England Fishery Management Council review of the NE multispecies monitoring program will evaluate whether the monitoring program is meeting the goal of improved accuracy of catch data, while maximizing value and minimizing costs of the program, using complete data from 2 fishing years once the data are available (fishing years 2022 and 2023) and periodically after the initial review. The review process should be flexible and general, and include establishing metrics and indicators of how well the monitoring program improved accuracy while maximizing value and minimizing costs.

(7) *Hail reports.* For the purposes of the monitoring requirements specified in paragraph (1)(2) of this section, sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to their respective contracted monitoring service providers. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any at-sea or electronic monitoring program required by paragraph (1)(2) of this section, or specified in the annual sector operations plan, consistent with § 648.87(b)(5).

(8) *Notification of monitoring service provider change.* If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in paragraph (1)(2) of this section, the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved monitoring service providers in conjunction with the submission of the next weekly sector catch report specified in § 648.87(b)(1)(v)(B). A sector may use more than one monitoring service provider at any time, provided any monitoring service provider

employed by or contracted with a sector meets the standards specified in paragraph (b)(4) of this section.

(9) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to § 648.87(b)(1)(i), unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in § 648.87(b)(1)(v). Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each regulated species allocated to a sector.

(10) *Sector monitoring program operational standards.* In addition to the monitoring service provider standards specified in paragraph (h)(5) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (l)(2) of this section must meet the following operational standards to be approved by NMFS:

(i) *Vessel requirements—(A) Electronic monitoring system requirements.* A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must do the following:

(1) Ensure that the electronic monitoring system is fully operational for every sector trip, which means it is operating, recording, and retaining the recording for the duration of every trip. A vessel may not fish without a fully operational electronic monitoring system, unless issued a waiver by NMFS for that trip;

(2) Conduct a system check of the electronic monitoring system prior to departing on a fishing trip. An electronic monitoring system check must show that the electronic monitoring system is fully operational and the amount of video storage space available to record the fishing trip;

(3) Maintain clear and unobstructed camera views at all times. Ensure lighting is sufficient in all circumstances to illuminate catch so that catch and discards are visible and may be identified and quantified as required; and

(4) Ensure no person tampers with, disconnects, or destroys any part of the electronic monitoring system, associated equipment, or recorded data.

(B) *Vessel monitoring plan requirements for electronic monitoring vessels.* A vessel must have a NMFS-approved vessel monitoring plan to use electronic monitoring to meet sector monitoring requirements in this section. NMFS will approve a vessel monitoring plan that sufficiently describes how the electronic monitoring system is configured on a particular vessel applying for approval and how the fishing and monitoring operations will be conducted in a manner to effectively monitor catch in accordance with the EM program requirements and standards in this section. Vessels must submit vessel monitoring plans and revisions to vessel monitoring plans for NMFS review and approval, as instructed by the Regional Administrator.

(1) The vessel monitoring plan must be onboard the vessel at all times.

(2) The vessel owner, operator and crew must comply with all catch handling protocols and other requirements described in the vessel monitoring plan, including sorting catch and processing any discards within view of the cameras and consistent with the vessel monitoring plan.

(3) Modifications to any vessel monitoring plan must be approved by NMFS prior to such vessel fishing under the conditions of the new vessel monitoring plan.

(4) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must submit all electronic monitoring data to the monitoring service provider in accordance with the electronic monitoring program requirements in this section, or as otherwise instructed by the Regional Administrator.

(5) A vessel owner or operator must make the electronic monitoring system, associated equipment, electronic monitoring data, or vessel monitoring plan available to NMFS for inspection, upon request.

(6) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must turn on its camera for 100 percent of sector trips.

(7) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements in this section must comply with the requirements in paragraphs (1)(10)(i)(A) and (B) of this section or the Regional Administrator may withdraw approval for the vessel to use electronic monitoring.

(8) The Regional Administrator may revise vessel monitoring plan requirements and approval standards in this section consistent with the Administrative Procedure Act. Any revisions will be published on the agency's website.

(C) *Safety hazards.* The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (1)(2) of this section prior to leaving port. A vessel may not begin a trip if it has failed a review of safety issues pursuant to paragraph (1)(10)(ii)(D) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i) of this chapter.

(D) *Dockside monitoring.* Vessels using maximized retention electronic monitoring must participate in either an independent third party dockside monitoring program approved by NMFS, or the dockside monitoring program operated by NMFS, as instructed by NMFS.

(I) The vessel operator and crew may not begin offloading unless a dockside monitor is present or NMFS has issued the trip a waiver from the dockside monitoring program.

(2) The vessel operator and crew must allow the dockside monitor access to the fish hold immediately following the offload in order to confirm all allocated groundfish were offloaded unless NMFS has issued the trip a waiver from the dockside monitoring program.

(E) *Retention of fish.* Vessels using maximized retention electronic monitoring must retain all fish from each allocated regulated species, regardless of length.

(ii) *Sector monitoring plan monitoring service provider requirements.* In addition to the monitoring service provider standards in paragraph (h) of this section, sector monitoring plans must include the following operational requirements for any monitoring provider contracted to meet sector monitoring program requirements in this paragraph (l):

(A) *At-sea monitoring report.* Within 48 hours of the completion of a trip, or as otherwise instructed by the Regional Administrator, electronic submission to NMFS and the sector a report detailing the area fished and the amount of each species kept and discarded. A standard format for submission shall be specified by NMFS and distributed to all monitoring service providers and sectors. NMFS will accept only monitoring data that passes automated NMFS data quality checks.

(B) *Electronic monitoring report.* A report detailing area fished and the amount of each species discarded must be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 10 business days of a trip being selected for video review, or as otherwise instructed by the Regional Administrator. The format for submission shall be specified by NMFS and distributed to all monitoring service providers and sectors. NMFS will accept only monitoring data that passes automated NMFS data quality checks.

(C) *Vessel feedback report.* A report must be submitted to the vessel owner following a trip with detailed feedback on the vessel operator's and crew's catch



handling, camera maintenance, and vessel monitoring plan compliance. A copy must be submitted to NMFS upon request.

(D) *Safety hazards.* Completion by an at-sea monitor of a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (l)(10)(ii)(D), an at-sea monitor cannot be deployed on that vessel for that trip.

(E) *Gear.* Provision of all equipment specified by the Northeast Fisheries Science Center to each at-sea monitor before the at-sea monitor may be deployed on a vessel. A list of such equipment is available from the Northeast Fisheries Science Center upon request. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (i)(2) of this section.

(F) *Adjustment to service provider requirements and approval standards.* The Regional Administrator may revise monitoring service provider requirements and approval standards in this section consistent with the Administrative Procedure Act.

(iii) *Sector requirements.* Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (l)(10)(iii). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(v) of this section. Unless otherwise specified in this paragraph (l)(10), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector's ACE for each regulated species stock regardless of the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (l)(10), any regulated species or ocean pout caught using gear capable of

catching NE multispecies (*i.e.*, gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations in this chapter for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, for example, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the appropriate non-groundfish component, such as the other sub-component or the appropriate yellowtail flounder stock's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(iv) *Dealer requirements.* Federally permitted NE multispecies dealers must allow dockside monitors access to their premises, scales, and any fish received from vessels participating in the maximized retention electronic monitoring program for the purpose of collecting fish species and weights of fish received by the dealer, fish length measurements, and the collection of age structures such as otoliths or scales.

(A) *Facilitation.* Federally permitted NE multispecies dealers must facilitate dockside monitoring for vessels participating in a maximized retention electronic monitoring program, including, but not limited to, the following requirements:

(1) Provide a safe sampling station, including shelter from weather, for dockside monitors to conduct their duties and process catch, that is equivalent to the accommodations provided to the dealer's staff.

(2) Allow dockside monitors access to bathrooms equivalent to the accommodations provided to the dealer's staff.

(3) Allow dockside monitors access to any facilities for washing equipment with fresh water that are provided to the dealer's staff.

(B) *Processing, sorting, labeling, and reporting.* Federally permitted NE multispecies dealers must process, and may possess, fish for vessels participating in a maximized retention electronic monitoring program consistent with and including, but not limited to, the following requirements:

(1) Offload from vessels participating in the maximized retention monitoring program all fish below the minimum size specified at § 648.83, report fish below the minimum size specified at § 648.83 by species, and provide the dockside monitor access to those fish below the minimum size at the safe sampling station.

(2) Sort by species all unmarketable fish from other fish, when identifiable to species.

(3) Clearly identify, mark, or label all containers with fish below the minimum size specified in § 648.83 as containing undersized fish, the fishing vessel from which they were offloaded, and the date of offloading.

(4) Report all fish below the minimum size specified in § 648.83, and all unmarketable fish, as instructed by NMFS.

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring operational standards specified in paragraph (l)(10) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(m) \* \* \*

(1) \* \* \*

(i) In addition to the requirement for any vessel holding an Atlantic herring permit to carry an observer described in paragraph (a) of this section, vessels issued a Category A or B Herring Permit are subject to industry-funded monitoring (IFM) requirements in this section on declared Atlantic herring trips, unless the vessel is carrying an observer to

fulfill Standard Bycatch Reporting Methodology requirements in § 648.18. An owner of a midwater trawl vessel, required to carry an observer when fishing in Northeast Multispecies Closed Areas at § 648.202(b), may purchase an IFM high volume fisheries (HVF) observer to access Closed Areas on a trip-by-trip basis. General requirements for IFM programs in New England Council FMPs are specified in paragraph (g) of this section. Possible IFM monitoring for the Atlantic herring fishery includes observers, at-sea monitors, and electronic monitoring and portside samplers, as defined in § 648.2.

\* \* \* \* \*

(v) To provide the required IFM coverage aboard declared Atlantic herring trips, observers and monitors must hold a high volume fisheries certification from NMFS.

(2) \* \* \*

(iii) \* \* \*

(A) For IFM observer coverage aboard vessels fishing with midwater trawl gear to access the Northeast Multispecies Closed Areas, consistent with requirements at § 648.202(b), at any point during the trip;

\* \* \* \* \*

(4) \* \* \*

(i) An owner of an Atlantic herring vessel required to have monitoring under paragraph (m)(3) of this section must arrange for monitoring by an observer from a monitoring service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected for monitoring must contact a monitoring service provider prior to the beginning of the trip and the monitoring service provider will notify the vessel owner, operator, or manager whether monitoring is available. A list of approved monitoring service providers shall be posted on the NMFS website: *<https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>*.

\* \* \* \* \*

(6) *Sampling requirements for observers and monitors.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access herring permit on which an observer or monitor is embarked must provide observers or monitors:

\* \* \* \* \*

(n) \* \* \*

(2) *Sampling requirements for limited access Atlantic mackerel and longfin squid/butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or longfin squid/butterfish moratorium permit on which an observer is embarked must provide observers:

\* \* \* \* \*

6. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.14 by:

- a. Revising paragraph (a)(7);
- b. Removing the heading from paragraph (a)(10);
- c. Revising paragraphs (e), (i)(1)(ix)(B), (k)(3), and (k)(14)(ix) through (xiii);
- d. Adding paragraphs (k)(14)(xiv) through (xvi); and
- e. Revising paragraph (r)(2)(v).

The revisions and additions read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(7) Possess, import, export, transfer, land, or have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters

by a vessel that does not hold a valid permit under this part, or are species included in the NE Multispecies Fishery Management Plan that were either harvested by a vessel participating in the maximized retention electronic monitoring program consistent with § 648.11(l)(10)(i)(E) or harvested by a vessel issued a valid High Seas Fishing Compliance permit that fished exclusively in the NAFO Regulatory Area.

\* \* \* \* \*

(e) *Observer program.* It is unlawful for any person to do any of the following:

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any observer or monitor conducting his or her duties; any electronic monitoring provider staff who collects data required under this part; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in §§ 648.7(g) and 648.11(l)(10)(v).

(2) Refuse monitoring coverage by an observer or monitor if selected for monitoring coverage by the Regional Administrator or the Regional Administrator's designee.

(3) Fail to provide information, notification, accommodations, access, or reasonable assistance to an observer, monitor, or electronic monitoring provider staff conducting his or her duties as specified in § 648.11.

(4) Submit false or inaccurate data, statements, or reports.

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(ix) \* \* \*

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to an observer conducting his or her duties aboard a vessel, as specified in § 648.11.

\* \* \* \* \*

(k) \* \* \*

(3) *Dealer requirements.* It is unlawful for any person to:

(i) Purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, allocated regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

(ii) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(iii) Purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, allocated regulated species from a vessel participating in the maximized retention electronic monitoring program in § 648.11(l) unless the offload of catch was observed by a dockside monitor or NMFS issued a waiver from dockside monitoring for the trip.

(iv) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any observer or monitor conducting his or her duties or any electronic monitoring provider staff who collects data required under this part.

(v) Impede a dockside monitor's access to their premises, scales, and any fish received from vessels participating in the maximized retention electronic monitoring program; fail to facilitate dockside monitoring for vessels participating in a maximized retention electronic monitoring program; or fail to process, sort, label, and report fish from vessels participating in the maximized retention monitoring program, as required in § 648.11(l)(10)(iv).

\* \* \* \* \*

(14) \* \* \*

(ix) Fail to comply with the reporting requirements specified in §§ 648.11(l)(10)(iii) and 648.87(b)(1)(v).

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel if assigned to carry an at-sea monitor for that trip, or without an operational electronic monitoring system installed on board, as specified in § 648.11(l)(3) and (l)(10)(i).

(xi) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.11(l)(10)(i)(C).

(xii) Fail to comply with the electronic monitoring system requirements as specified in § 648.11(l)(10)(i)(A), including, but not limited to: ensuring the electronic monitoring system is fully operational; conducting a system check of the electronic monitoring system; ensuring camera views are unobstructed and clear; and ensuring that no person tampers with the electronic monitoring system.

(xiii) Fail to comply with the vessel monitoring plan requirements as specified in § 648.11(l)(10)(i)(B), including, but not limited to: carrying the vessel monitoring plan onboard the vessel at all times; complying with all catch handling protocols and other requirements in the vessel monitoring plan; submitting electronic monitoring data as



required; and making the electronic monitoring system available to NMFS for inspection upon request.

(xiv) Offload fish without a dockside monitor present or without a waiver issued by NMFS when participating in the maximized retention electronic monitoring program.

(xv) Resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any dockside monitor conducting his or her duty to inspect a fish hold after offload.

(xvi) Fish under a waiver from the groundfish sector monitoring program issued under § 648.11(l)(5)(ii) or (iii) without complying with the requirements of § 648.11(l)(5)(ii) or (iii), respectively; the VMS declaration requirements at § 648.10; and the pre-trip notification requirements at § 648.11(l)(1).

\* \* \* \* \*

(r) \* \* \*

(2) \* \* \*

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a)(3) through (5) and (c)(3) and (4), without an observer on board, if the vessel has been issued an Atlantic herring permit.

\* \* \* \* \*

7. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.51 by revising paragraphs (c)(4) and (e)(3)(iii) to read as follows:

**§ 648.51 Gear and crew restrictions.**

\* \* \* \* \*

(c) \* \* \*

(4) An at-sea observer is on board, as required by § 648.11(k).

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(iii) An at-sea observer is on board, as required by § 648.11(k).

\* \* \* \* \*

8. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.80 by revising paragraphs (d)(3) and (e)(2)(ii) to read as follows:

**§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(d) \* \* \*

(3) The vessel carries an observer, if requested by the Regional Administrator;

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) The vessel carries an observer, if requested by the Regional Administrator;

\* \* \* \* \*

9. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.83 by revising paragraph (a)(1) to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

(a) \* \* \*

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in §§ 648.11(l)(10)(i)(E) and 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

Table 1 to Paragraph (a)(1) – Minimum Fish Sizes (TL) for Commercial Vessels

Species	Size in inches
Cod	19 (48.3 cm)
Haddock	16 (40.6 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	13 (33 cm)
Yellowtail flounder	12 (30.5 cm)
American plaice (dab)	12 (30.5 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	7 (17.8 cm)

\* \* \* \* \*

10. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.85 by revising paragraph (e)(1)(viii)(C) to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(viii) \* \* \*

(C) *Administration of thresholds.* (1) For the purpose of determining a sector's monthly redfish landings threshold performance described in paragraph (e)(1)(viii)(A)(I) of this section and the annual redfish landings threshold described in paragraph (e)(1)(viii)(B)(I) of this section, landings of allocated regulated species by vessels participating in a maximized retention electronic monitoring program consistent with § 648.11(l), including landings of allocated stocks below the minimum size at § 648.83(a)(1), will be counted as landings and not discards.

(2) For the purpose of determining a sector's monthly discards threshold performance described in paragraph (e)(1)(viii)(A)(2) of this section, a trip by a vessel participating in a maximized retention electronic monitoring program consistent with § 648.11(l) will be excluded from evaluation of the monthly discard threshold.

(3) If a sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in paragraphs (e)(1)(viii)(A)(1) and (2) of this section for four or more months total, or three or more consecutive months, in a fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year, and place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(4) If a sector fails to meet the annual redfish landings threshold described in paragraph (e)(1)(viii)(B)(1) of this section in a fishing year, the Regional Administrator shall place the sector and its vessels in a probationary status for one fishing year beginning the following fishing year.

(5) While in probationary status as described in paragraph (e)(1)(viii)(C)(3) or (4) of this section, if the sector fails to meet the monthly redfish landings threshold or the monthly discards threshold described in paragraphs (e)(1)(viii)(A)(1) and (2) of this section for four or more months total, or three or more consecutive months, in that fishing year, the Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the remainder of the fishing year and the following fishing year.

(6) If a sector fails to meet the annual redfish landings threshold in paragraph (e)(1)(viii)(B)(1) of this section for any fishing year during which the sector is in a probationary status as described in paragraph (e)(1)(viii)(C)(3) or (4) of this section, the

Regional Administrator shall prohibit all vessels in that sector from fishing under the provisions of the Redfish Exemption Program for the following fishing year.

(7) The Regional Administrator may determine a sector has failed to meet required monthly or annual thresholds described in paragraphs (e)(1)(viii)(A) and (B) of this section using available information including, but not limited to, vessel declarations and notifications, vessel trip reports, dealer reports, and observer and electronic monitoring records.

(8) The Regional Administrator shall notify a sector of a failure to meet the required monthly or annual thresholds and the sector's vessels prohibition or probation status consistent with the provisions in paragraphs (e)(1)(viii)(C)(I) through (7) of this section. The Regional Administrator shall also make administrative amendments to the approved sector operations plan and issue sector vessel letters of authorization consistent with the provisions in paragraphs (e)(1)(viii)(C)(I) through (7) of this section. These administrative amendments may be made during a fishing year or during the sector operations plan and sector contract approval process.

(9) A sector may request in writing that the Regional Administrator review and reverse a determination made under the provisions of this section within 30 days of the date of the Regional Administrator's determination. Any such request must be based on information showing the sector complied with the required thresholds, including, but not limited to, landing, discard, observer or electronic monitoring records. The Regional Administrator will review and maintain or reverse the determination and notify the sector of this decision in writing. Any determination resulting from a review conducted under this paragraph (e)(1)(viii)(C)(9) is final and may not be reviewed further.

\* \* \* \* \*

11. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.86 by revising the introductory text and paragraph (a)(3)(ii)(A)(I) to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

Except as provided in §§ 648.11(l) and 648.17, or elsewhere in this part, the following possession restrictions apply:

(a) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(I) *Haddock incidental catch cap.* When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.90(a)(4)(iii)(D), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, *i.e.*, the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(2) and (3) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel's gear is stowed and not available for immediate use as defined in § 648.2 while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM Area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by

observers or monitors by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

\* \* \* \* \*

12. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.87 by:

- a. Revising paragraph (b)(1) introductory text and (b)(1)(v) through (viii);
- b. Removing paragraph (b)(1)(ix);
- c. Revising paragraph (b)(2) and (3); and
- d. Removing paragraphs (b)(4) and (5).

The revisions read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

(b) \* \* \*

(1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1) and (b)(2) and (3) of this section, comply with the conditions and restrictions of this paragraph (b)(1), and comply with the groundfish sector monitoring program in § 648.11(l).

\* \* \* \* \*

(v) *Sector reporting requirements.* In addition to the other reporting/recordkeeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(v).

(A) *VMS declarations and trip-level catch reports.* Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by

statistical area when fishing in multiple broad stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each regulated species stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the



biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(D) *Streamlining sector reporting requirements.* The reporting/recordkeeping requirements specified in § 648.11(l) and this paragraph (b)(1)(v) may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(vi) *Interaction with other fisheries--(A) Use of DAS.* A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations in this part for another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vi)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of regulated species while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(vii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (*i.e.*, through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not

required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(vii)(B) of this section.

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(vii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

(viii) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector

intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and state permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting National Environmental Policy Act (NEPA) document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

- (i) A list of all parties, vessels, and vessel owners who will participate in the sector;
- (ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;
- (iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;

(vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any hail reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides

reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vi)(B) of this section; and

(xv) A list of existing regulations in this part that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis*. In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

\* \* \* \* \*

13. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.90 by revising paragraphs (a)(2)(iii) and (iv) and (a)(4)(i)(B) to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iii) In addition, the PDT may develop ranges of options for any of the management measures in the FMP and the following conditions that may be adjusted through a framework adjustment to achieve FMP goals and objectives including, but not limited to:

(A) Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.;

(B) Accumulation limits due to a permit buyout or buyback;

(C) Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;

(D) Calculation of area-specific ACLs (including sub-ACLs for specific stocks and areas (*e.g.*, Gulf of Maine cod)), area management boundaries, and adoption of area-specific management measures including the delineation of inshore/offshore fishing practices, gear restrictions, declaration time periods;

(E) Sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, an optional sub-ACL specific to Handgear A permitted vessels, management uncertainty buffers, and the calculation of PSCs;

(F) Sector administration provisions, including at-sea, electronic, dockside, and other monitoring tools, coverage requirements and processes, monitoring program review, or other measures; sector reporting requirements; vessel-specific coverage levels;

(G) State-operated permit bank administrative provisions;

(H) Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

(I) Changes to administrative measures;

(J) Additional uses for Regular B DAS;

(K) Reporting requirements;

(L) Declaration requirements pertaining to when and what time period a vessel must declare into or out of a fishery management area;

(M) The GOM Inshore Conservation and Management Stewardship Plan;

(N) Adjustments to the Handgear A or B permits;

(O) Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH;

(P) Special Access Program (SAP) modifications;

(Q) Revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment;

(R) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and

(S) Any other measures currently included in the FMP.

(iv) Based on the review of the most current scientific information available for the rebuilding plans for GOM cod and American plaice, the PDT shall determine whether the following conditions are met for either stock: The total catch limit has not been exceeded during the rebuilding program; new scientific information indicates that the stock is below its rebuilding trajectory (i.e., rebuilding has not progressed as expected); and  $F_{\text{rebuild}}$  becomes less than 75%  $F_{\text{MSY}}$ . If all three of these criteria are met, the PDT, and/or SSC, shall undertake a rebuilding plan review to provide new catch advice that includes the following, in priority order: Review of the biomass reference points and calculation of  $F_{\text{rebuild}}$  ACLs based on the review of the biomass reference points and the existing rebuilding plan.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) *ACL recommendations.* The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery. In years that the coverage target for the groundfish sector monitoring program specified in § 648.11(l) is set at 100 percent, the management



uncertainty buffer defaults to zero for the sector sub-ACL for the allocated regulated species stocks specified at § 648.87(b)(1)(i)(A), unless through an action the New England Fishery Management Council specifies a different management uncertainty buffer for a sector sub-ACL to prevent catches from exceeding an ACL when the coverage target is 100 percent. The need for a management uncertainty buffer for the sector sub-ACL will continue to be evaluated as part of each specification action. The PDT will consider whether the 100-percent monitoring coverage target supports a zero percent buffer, or any other factor has a significant potential to result in catches that could exceed ACLs and will recommend an appropriate management uncertainty buffer if necessary.

\* \* \* \* \*

14. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend § 648.202 by revising paragraph (b)(1) to read as follows:

**§ 648.202 Season and area restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed Areas, including Cashes Ledge Closure Area, Western GOM Closure Area, Closed Area I North (February 1-April 15), and Closed Area II, as defined in § 648.81(a)(3), (4), and (5) and (c)(3) and (4), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard an observer.

\* \* \* \* \*